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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 10

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 9, 1942.

CERTIORARI GRANTED APRIL 6, 1942.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT.

No. 8895.

MITCHEL CLIFTON ANDERSON ET AL.,
APPELLANTS,

VS.

THE UNITED STATES OF AMERICA,
APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

TRANSCRIPT OF RECORD ON APPEAL.

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Indictment.

Filed November 14, 1940.

First Count.

The grand jurors for the United States of America, duly impaneled, sworn and charged in the District Court of the United States for the Eastern District of Tennessee, meeting in the Southern Division of said district at the November, 1940, term of said court, to inquire in and for the body of said district at the term and court aforesaid, upon their oath find, charge and present:

That heretofore Mitchel Clifton Anderson, Van D. Jones, John Edward Simonds (alias: Ed Simonds), Felton Moore Woodward (alias: John M. Cash), Earl Hubbard, John David Queen, Robert Lee Rhodes, Robert Lee Ballew, James Gordon Parr, Tate C. Green, Leslie Bryant Green (alias: Mutt Green), Clyde L. Huffman, William Clint Huffman, John E. McGhee (alias: John E. McGee), Marion Luther Ellis, Benjamin Costin Cross, Joel Martin Simonds, Thomas Wayne Henry, Meggs Collins, William Rans Smith, and Theodore Woodward (alias: Sweat Woodward), whose full and true names other than as herein stated, are unknown to the grand jurors and who are hereinafter referred to in this indictment as defendants, and also described as conspirators, within the jurisdiction of this court, continuously, throughout the period of time from, on or about March 15, 1940, and thereafter, to and including May 1, 1940, in Polk County, Tennessee, and within the division and district aforesaid, unlawfully, knowingly, feloniously, and with corrupt intent, conspired,

combined, confederated, arranged and agreed each with the other and with divers other persons whose names are unknown to the grand jurors to commit certain offenses against the United States of America and the laws thereof, the offenses being to violate the provisions of Section 82, Title 18, United States Code Annotated, as amended, in that they, the defendants, would wilfully injure and would wilfully commit depredations against property of the United States of America held by and in possession of the Tennessee Valley Authority, a corporation in which the United States of America is a stockholder; that is to say, on and between the dates heretofore set forth, the defendants would wilfully destroy power lines and power poles by wilfully blasting said power lines and said power poles, which power lines and power poles were the property of the United States of America being held by and in the possession of the Tennessee Valley Authority, a corporation in which the United States of America is a stockholder contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oath aforesaid, further find, charge and present:

That at the hereinafter stated times, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the objects, designs and purposes of the aforesaid conspiracy, combination, confederation, arrangement and agreement, the hereinbefore named defendants and conspirators did and accomplished the following overt acts, some of which overt acts were

done and accomplished in the district aforesaid at the places herein set out and within the jurisdiction of this court, and some of which overt acts were done and accomplished in the Northern District of Georgia, Fannin County, at the places hereinafter set out, and some of which overt acts, as will hereinafter be set out, were done and accomplished in the Western District of North Carolina, Cherokee County, North Carolina:

1. On or about March 31, 1940, in Polk County, Tennessee, the defendant Mitchel Clifton Anderson sent word to the home of Felton Moore Woodward (alias: John M. Cash) instructing Felton Moore Woodward (alias: John M. Cash) to meet him in Ducktown, Tennessee, in defendant Anderson's office.

2. On or about March 31, 1940, in Polk County, Tennessee, defendant John E. McGhee (alias: John E. McGee), defendant Mitchel Clifton Anderson and defendant William Rans Smith met together in defendant Mitchel Clifton Anderson's office at Ducktown, Tennessee, and there discussed ways, means and plans for dynamiting power lines and power poles in Polk County, Tennessee, and in Fannin County, Georgia, which power lines and power poles were the property of the Tennessee Valley Authority and the United States of America, and on the date set forth in this overt act he, defendant Mitchel Clifton Anderson, stated that he would obtain the dynamite and the fuse with which the power lines and power poles, property of the Tennessee Valley Authority and the United States of America, would be dynamited and destroyed.

3. On or about March 31, 1940, in Polk County, Tennessee, the defendant Felton Moore Woodward (alias: John M. Cash) got into his automobile and drove to Ducktown, Tennessee, where he met the defendant Mitchel Clifton Anderson at defendant Anderson's office.

4. On or about March 31, 1940, in Polk County, Tennessee, at Ducktown, Tennessee, the defendant Mitchel Clifton Anderson instructed the defendant Felton Moore Woodward (alias: John M. Cash) to make arrangements to dynamite the power towers and power lines leading into the town of Copperhill, Tennessee, from Parksville, Tennessee, and from Blue Ridge, Georgia; the defendant Anderson instructing the defendant Felton Moore Woodward (alias: John M. Cash) that he, defendant Anderson, had the necessary dynamite or powder with which to blast or dynamite said power lines and power towers.

5. On or about March 31, 1940, in Polk County, Tennessee, the defendant Felton Moore Woodward (alias: John M. Cash) drove in his automobile to the home of the defendant Benjamin Costin Cross and there obtained an agreement from defendant Cross and defendant William Clint Huffman to assist in the dynamiting of power towers and power lines belonging to the Tennessee Valley Authority and the United States of America and located in Fannin County, Georgia, and Polk County, Tennessee.

6. On or about March 31, 1940, in Polk County, Tennessee, the defendants Benjamin Costin Cross, William Clint Huffman, Theodore Woodward (alias: Sweat Woodward) and Felton Moore Woodward (alias: John

M. Cash) got into an automobile and drove to defendant Clyde L. Huffman's home.

7. On or about March 31, 1940, in Polk County, Tennessee, the defendants Benjamin Costin Cross, Theodore Woodward (alias: Sweat Woodward) and Felton Moore Woodward (alias: John M. Cash) drove to the home of defendant Mitchel Clifton Anderson in Polk County, Tennessee, and there obtained 25 sticks, more or less; of dynamite and 450 feet, more or less, of fuse. The defendant Marion Luther Ellis there at the home of the defendant Anderson and on the date set out in this overt act, told the defendants Theodore Woodward (alias: Sweat Woodward) and Felton Moore Woodward (alias: John M. Cash) where the dynamite was concealed and helped the defendants Theodore Woodward (alias: Sweat Woodward) and Felton Moore Woodward (alias: John M. Cash) carry the dynamite and place it in Felton Moore Woodward's (alias: John M. Cash) automobile.

8. On or about March 31, 1940, in Polk County, Tennessee, the defendant Theodore Woodward (alias: Sweat Woodward) and defendant Felton Moore Woodward (alias: John M. Cash) and defendant Benjamin Costin Cross drove to Rogers Ferry Bridge in Polk County, Tennessee, where the defendant Benjamin Costin Cross got out of the automobile and took with him 12 or 13 sticks, more or less, of dynamite, and 225 feet more or less, of fuse.

9. On or about March 31, 1940, in Polk County, Tennessee, defendant Marion Luther Ellis made arrangements and plans with defendant Felton Moore Woodward (alias: John M. Cash) and defendant Theodore Woodward (alias:

Sweat Woodward) to obtain a brace and bit with which to bore holes in wooden power poles, which wooden power poles were the property of the Tennessee Valley Authority and the United States, so that dynamite could be placed therein.

10. On or about March 31, 1940, in Polk County, Tennessee, defendant Theodore Woodward (alias: Sweat Woodward) at the instigation of defendant Felton Moore Woodward (alias: John M. Cash) went to the home of defendant Robert Lee Rhodes to obtain the assistance of defendant Robert Lee Rhodes in dynamiting power lines and power poles located in Polk County, Tennessee, and Fannin County, Georgia, which power lines and power poles were the property of the Tennessee Valley Authority and the United States of America.

11. On or about March 31, 1940, in Polk County, Tennessee, the defendant Felton [redacted]oore Woodward (alias: John M. Cash) went to the home of defendant John Edward Simonds (alias: Ed Simonds) and told defendant John Edward Simonds (alias: Ed Simonds) of the plans and arrangements previously made to dynamite power lines and power poles in Polk County, Tennessee, and Fannin County, Georgia, belonging to the Tennessee Valley Authority and the United States of America, and obtained the consent of defendant John Edward Simonds (alias: Ed Simonds) to assist in dynamiting power lines and towers of the Tennessee Valley Authority and the United States of America in Fannin County, Georgia.

12. On or about March 31, 1940, defendant Theodore Woodward (alias: Sweat Woodward) and defendant Felton

Moore Woodward (alias; John M. Cash) drove in an automobile to the picket house near the Louisville & Nashville Railway depot at Copperhill, Tennessee, and made arrangements and plans for defendant Theodore Woodward (alias: Sweat Woodward) to take the place of defendant John David Queen on the picket line, so that defendant John David Queen could participate in the dynamiting of power lines and power poles in Fannin County, Georgia, which power lines and power poles were the property of the Tennessee Valley Authority and the United States of America.

13. On or about March 31, 1940, in Polk County, Tennessee, defendant Theodore Woodward (alias: Sweat Woodward) and defendant Felton Moore Woodward (alias: John M. Cash) drove in an automobile to the picket house near the Louisville & Nashville Railway depot at Copperhill, Tennessee, and there discussed plans for dynamiting power lines and power towers of the Tennessee Valley Authority and the United States Authority and the United States of America, and obtained the consent and promise of the defendant John David Queen to assist in dynamiting power lines and power poles owned by the Tennessee Valley Authority and the United States of America in Fannin County, Georgia.

14. On or about March 31, 1940, in Polk County, Tennessee, defendant Theodore Woodward (alias: Sweat Woodward), defendant Robert Lee Rhodes, defendant John Edward Simonds (alias: Ed Simonds) and defendant Felton Moore Woodward (alias: John M. Cash) drove in an automobile to the picket house near the Louisville

& Nashville Railway depot at Copperhill, Tennessee, and there picked up defendant John David Queen and let out of the automobile the defendant Theodore Woodward (alias: Sweat Woodward) so that defendant Theodore Woodward (alias: Sweat Woodward) could take the place of defendant John David Queen in the picket line at Copperhill, Tennessee, so that defendant John David Queen might participate in the dynamiting of the power lines and power poles in Fannin County, Georgia, which power lines and power poles were the property of the Tennessee Valley Authority and the United States of America.

15. On or about March 31, 1940, in Polk County, Tennessee, defendant Robert Lee Rhodes, defendant John Edward Simonds (alias: Ed Simonds), defendant Felton Moore Woodward (alias: John M. Cash) and defendant John David Queen got into an automobile and drove to the home of defendant Leslie Bryant Green (alias: Mutt Green) in Fannin County, Georgia.

16. On or about March 31, 1940, in Fannin County, Georgia, defendant Felton Moore Woodward (alias: John M. Cash) and defendant Robert Lee Rhodes remained in an automobile while defendant John David Queen and defendant John Edward Simonds (alias: Ed Simonds) went into the home of defendant Leslie Bryant Green (alias: Mutt Green) and there obtained a brace and bit or auger from Leslie Bryant Green (alias: Mutt Green) which brace and bit or auger were obtained for the purpose of drilling holes in wooden power poles owned by the Tennessee Valley Authority in Fannin County,

Georgia, and Polk County, Tennessee, which holes were to be filled with dynamite and exploded, said Leslie Bryant Green (alias: Mutt Green) well knowing that such was the purpose for which said brace and bit or auger were desired and obtained.

17. On or about March 31, 1940, in Fannin County, Georgia, defendant Felton Moore Woodward (alias: John M. Cash), defendant Robert Lee Rhodes, defendant John David Queen and defendant John Edward Simonds (alias: Ed Simonds) drove in an automobile from the home of defendant Leslie Bryant Green (alias: Mutt Green) to the vicinity of Jim Allen's place in McCaysville, Georgia, at which point defendant Robert Lee Rhodes, defendant John David Queen and defendant John Edward Simonds (alias: Ed Simonds) got out of the automobile and took 12 or 13, more or less, sticks of dynamite and 225, more or less, feet of fuse with them.

18. On or about March 31, 1940, in Fannin County, Georgia, defendant John Edward Simonds (alias: Ed Simonds), defendant John David Queen and defendant Robert Lee Rhodes drilled holes in two wooden power poles, which power poles were the property of the Tennessee Valley Authority and the United States of America and inserted therein dynamite or powder and attached dynamite caps to the dynamite and fuses to dynamite caps and ignited the fuses, thereby causing an explosion which damaged and destroyed said power poles and power lines attached thereto.

19. On or about April 8, 1940, in Polk County, Tennessee, defendant Felton Moore Woodward (alias:

John M. Cash), defendant William Clint Huffman, defendant Clyde L. Huffman, defendant Meggs Collins, defendant Mitchel Clifton Anderson, defendant John E. McGhee (alias: John E. McGee) and defendant William Rans Smith met together in defendant Anderson's office where these defendants mentioned in this overt act discussed and made plans to dynamite power lines and power poles belonging to the Tennessee Valley Authority and the United States of America, located in Fannin County, Georgia, and Polk County, Tennessee, and defendant Mitchel Clifton Anderson instructed the other defendants mentioned in this overt act that he wanted "the lights put out again so the men could go into the mines."

20. On or about April 8, 1940, in Polk County, Tennessee, defendant Mitchel Clifton Anderson, defendant John E. McGhee (alias: John E. McGee), defendant William Rans Smith, defendant William Clint Huffman and defendant Clyde L. Huffman constructed and placed certain wires upon clocks which clocks were so constructed for the purpose of discharging dynamite which was to be placed in the copper mills at Isabella, Tennessee.

21. On or about April 8, 1940, in Polk County, Tennessee, defendant Felton Moore Woodward (alias: John M. Cash) met defendant John E. McGhee (alias: John E. McGee) in defendant Mitchel Clifton Anderson's office in Ducktown, Tennessee, and there defendant John E. McGhee (alias: John E. McGee) requested defendant Felton Moore Woodward (alias: John M. Cash) to make a trip to Chattanooga, Tennessee, and deliver a case of

dynamite from Chattanooga, Tennessee, to Polk County, Tennessee.

22. On or about April 8, 1940, in Polk County, Tennessee, at defendant Mitchel Clifton Anderson's office in Ducktown, Tennessee, defendant Anderson instructed defendant Felton Moore Woodward (alias: John M. Cash) to meet him at the Key Hotel in Chattanooga, Tennessee, for the purpose of delivering from Chattanooga, Tennessee, to Polk County, Tennessee, a case of dynamite or powder, and defendant Mitchel Clifton Anderson gave defendant Felton Moore Woodward (alias: John M. Cash) $10 to be used in making this trip.

23. On or about April 8, 1940, in Hamilton County, Tennessee, defendant Felton Moore Woodward (alias: John M. Cash) met defendant Mitchel Clifton Anderson and defendant Van D. Jones at the Key Hotel and made arrangements and plans with defendant Mitchel Clifton Anderson and defendant Van D. Jones for the transfer of a case of dynamite from the automobile of defendant Van D. Jones to the automobile of defendant Felton Moore Woodward (alias: John M. Cash).

24. On or about April 8, 1940, in Hamilton County, Tennessee, defendant Felton Moore Woodward (alias: John M. Cash) obtained from defendant Van D. Jones and defendant Mitchel Clifton Anderson, from defendant Jones's automobile at a Gulf filling station in Chattanooga, Tennessee, one case of dynamite or powder concealed in a sack, the defendant Felton Moore Woodward (alias: John M. Cash) placing said dynamite in the rear compartment of his automobile and removing said auto-

mobile to the home of his sister in Chattanooga, Tennessee.

25. On or about April 8, 1940, in Hamilton County, Tennessee, defendant Felton Moore Woodward (alias: John M. Cash), defendant Van D. Jones and defendant Mitchel Clifton Anderson met at the Key Hotel in Chattanooga, Tennessee, and there planned a trip to Bessemer, Alabama, for the purpose of obtaining in Bessemer, Alabama, dynamite and fuse to be used in the destruction of power lines and power towers of the Tennessee Valley Authority and the United States of America in Fannin County, Georgia, and Polk County, Tennessee.

26. On or about April 9, 1940, in Hamilton County, Tennessee, the defendant Van D. Jones and defendant Felton Moore Woodward (alias: John M. Cash) left Chattanooga, Tennessee, in defendant Van D. Jones's automobile and went to Bessemer, Alabama, for the purpose of obtaining dynamite and fuse for use in the damage and destruction of power lines and power poles of the Tennessee Valley Authority and the United States of America in Fannin County, Georgia, and in Polk County, Tennessee.

27. On or about April 9, 1940, in Bessemer, Alabama, defendant Van D. Jones introduced defendant Felton Moore Woodward (alias: John M. Cash) to a person unknown to the grand jurors, which person loaned an automobile to the defendant Felton Moore Woodward (alias: John M. Cash) for the purpose of transporting defendant Felton Moore Woodward (alias: John M. Cash) to the Hercules Powder Company, Bessemer, Alabama.

28. On or about April 9, 1940, in Bessemer, Alabama, the defendant Van D. Jones instructed defendant Felton Moore Woodward (alias: John M. Cash) as to the method and means to be used in obtaining dynamite and fuse at the Hercules Powder Company, Bessemer, Alabama.

29. On or about April 9, 1940, in Bessemer, Alabama, the defendant Felton Moore Woodward (alias: John M. Cash) purchased from the Hercules Powder Company, Bessemer, Alabama, three cases of dynamite, 500 feet of fuse and one box of dynamite caps and there signed the name of "John M. Cash" as having made said purchases.

30. On or about April 9, 1940, in Bessemer, Alabama, defendant Felton Moore Woodward (alias: John M. Cash) met defendant Van D. Jones and transferred from the car driven by defendant Felton Moore Woodward (alias: John M. Cash) to defendant Van D. Jones's car three cases of dynamite, 500 feet of dynamite fuse and one box of dynamite caps.

31. On or about April 10, 1940, in Bessemer, Alabama, defendant Van D. Jones, and defendant Felton Moore Woodward (alias: John M. Cash) left Bessemer, Alabama, in an automobile, carrying with them in said automobile three cases of dynamite, 500 feet of dynamite fuse and one box of dynamite caps.

32. On or about April 10, 1940, in Hamilton County, Tennessee, defendant Van D. Jones and defendant Felton Moore Woodward (alias: John M. Cash) arrived in Chattanooga, Tennessee, having with them three cases of dynamite, 500 feet of dynamite fuse and one box of dynamite

caps, and there transferred said fuse, dynamite and caps to the automobile owned by defendant Felton Moore Woodward (alias: John M. Cash).

33. On or about April 10, 1940, within the jurisdiction of this court, defendant Van D. Jones drove the defendant Felton Moore Woodward (alias: John M. Cash) and Felton Moore Woodward's (alias: John M. Cash) wife and son in an automobile from Chattanooga, Tennessee, to Copperhill, Tennessee.

34. On or about April 11, 1940, in Polk County, Tennessee, the defendant Van D. Jones and defendant Clyde L. Huffman and defendant Felton Moore Woodward (alias John M. Cash) got into an automobile and defendant Van D. Jones drove said automobile to Chattanooga, Tennessee.

35. On or about April 11, 1940, in Hamilton County, Tennessee, defendant Clyde L. Huffman obtained defendant Felton Moore Woodward's (alias: John M. Cash) automobile which contained about four cases of dynamite or powder, 500 feet of fuse, and one box of blasting caps, and drove said automobile to the home of defendant Tate C. Green in Fannin County, Georgia.

36. On or about April 11, 1940, in Fannin County, Georgia, defendant Tate C. Green and defendant Clyde L. Huffman took about four cases of dynamite or powder, 500 feet of fuse and a box of blasting caps from the automobile driven by defendant Felton Moore Woodward (alias: John M. Cash) and hid the same in the woods near the home of defendant Tate C. Green.

37. On or about April 14, 1940, in Polk County, Tennessee, defendant Felton Moore Woodward (alias:

John M. Cash) picked up defendant John Edward Simonds (alias: Ed Simonds) in an automobile at the home of defendant John Edward Simonds (alias: Ed Simonds) and took defendant John Edward Simonds (alias: Ed Simonds) and defendant Theodore Woodward (alias: Sweat Woodward) to the home of defendant Joel Martin Simonds in Cherokee County, North Carolina, where defendant Joel Martin Simonds and defendant John Edward Simonds (alias: Ed Simonds) conversed with each other.

38. On or about April 14, 1940, in Polk County, Tennessee, at the home of defendant John Edward Simonds (alias: Ed Simonds), defendant Felton Moore Woodward (alias: John M. Cash) met defendant John Edward Simonds (alias: Ed Simonds) and made arrangements and plans to again dynamite power lines and power poles, which power lines and power poles were the property of the Tennessee Valley Authority and the United States of America in Fannin County, Georgia.

39. On or about April 14, 1940, in Polk County, Tennessee, defendant Felton Moore Woodward (alias: John M. Cash) and defendant Theodore Woodward (alias: Sweat Woodward) left Copperhill, Tennessee, in an automobile and drove said automobile to the home of William Clint Huffman in Fannin County, Georgia, and there defendant Felton Moore Woodward (alias: John M. Cash) instructed defendant William Clint Huffman that the power lines and power poles of the Tennessee Valley Authority were to be dynamited again on April 14, 1940, and defendant William Clint Huffman agreed to dynamite power lines and power poles of the Tennessee Valley

Authority and the United States of America in Polk County, Tennessee.

40. On or about April 14, 1940, in Polk County, Tennessee, defendant Felton Moore Woodward (alias: John M. Cash) and defendant Theodore Woodward (alias: Sweat Woodward) drove in an automobile to the home of John Edward Simonds (alias: Ed Simonds), picked up John Edward Simonds (alias: Ed Simonds) and drove defendant John Edward Simonds (alias: Ed Simonds) to the home of Tate C. Green in Fannin County, Georgia.

41. On or about April 14, 1940, in Fannin County, Georgia, defendant John Edward Simonds (alias: Ed Simonds), defendant Leslie Bryant Green (alias: Mutt Green) and defendant Tate C. Green obtained a quantity of dynamite or powder, fuse and blasting caps from the woods near the home of defendant Tate C. Green.

42. On or about April 14, 1940, in Fannin County, Georgia, the defendant John Edward Simonds (alias: Ed Simonds), defendant Leslie Bryant Green (alias: Mutt Green) and defendant Tate C. Green placed dynamite at the base of three legs of a steel power tower owned by the Tennessee Valley Authority and the United States of America, attached fuse and caps to said dynamite and ignited said fuse, thereby causing an explosion of said dynamite or powder, which resulted in the destruction and damage of said power towers and power lines.

43. On or about April 18, 1940, in Polk County, Tennessee, at Isabella, Tennessee, the defendant Felton Moore Woodward (alias: John M. Cash), defendant Mitchel Clifton Anderson, defendant John Edward Si-

monds (alias: Ed Simonds), defendant Joel Martin Simonds, defendant Earl Hubbard, defendant Thomas Wayne Henry, defendant Meggs Collins, defendant John E. McGhee (alias John E. McGee) met in the union hall to discuss further dynamiting of power lines and power poles of the Tennessee Valley Authority and the United States of America, which power poles and power lines of the Tennessee Valley Authority were located in Fannin County, Georgia, and Polk County, Tennessee.

44. On or about April 18, 1940, in Polk County, Tennessee, at Isabella, Tennessee, at a meeting in the union hall, defendant Mitchel Clifton Anderson, defendant John Edward Simonds (alias: Ed Simonds), defendant Joel Martin Simonds, defendant Earl Hubbard, defendant Thomas Wayne Henry, defendant Meggs Collins, defendant John E. McGhee (alias: John E. McGee), and defendant Felton Moore Woodward (alias: John M. Cash) made plans and arrangements to again dynamite power lines and power poles of the Tennessee Valley Authority located in Fannin County, Georgia, and Polk County, Tennessee.

45. On or about April 18, 1940, in Polk County, Tennessee, at Isabella, Tennessee, at a meeting in the union hall, attended by defendant Mitchel Clifton Anderson, defendant John Edward Simonds (alias: Ed Simonds), defendant Joel Martin Simonds, defendant Earl Hubbard, defendant Thomas Wayne Henry, defendant Meggs Collins, defendant John E. McGhee (alias: John E. McGee) and defendant Felton Moore Woodward (alias: John M. Cash), it was agreed by the aforesaid defendants that

defendant John Edward Simonds (alias: Ed Simonds), defendant James Gordon Parr, defendant Robert Lee Ballew, defendant John David Queen, and defendant Robert Lee Rhodes were to dynamite power lines and power poles of the Tennessee Valley Authority in Fannin County, Georgia, and that defendant William Clint Huffman and defendant Clyde L. Huffman were to dynamite certain power lines and power poles of the Tennessee Valley Authority and the United States of America in Polk County, Tennessee.

46. On or about April 18, 1940, in Polk County, Tennessee, at Isabella, Tennessee, at a meeting in union hall, attended by defendant Mitchel Clifton Anderson, defendant John Edward Simonds (alias: d Simonds), defendant Joel Martin Simonds, defendant Earl Hubbard, defendant Thomas Wayne Henry, defendant Meggs Collins, defendant John E. McGhee (alias: John E. McGee) and defendant Felton Moore Woodward (alias: John M. Cash), the defendant John Edward Simonds (alias: Ed Simonds) stated he would assist in dynamiting power lines and power poles of the Tennessee Valley Authority in Fannin County, Georgia.

47. On or about April 22, 1940, in Polk County, Tennessee, defendant Theodore Woodward (alias: Sweat Woodward), defendant Felton Moore Woodward (alias: John M. Cash) and defendant Earl Hubbard left Copperhill, Tennessee, in an automobile and drove to Barnes Chapel, North Carolina.

48. On or about April 22, 1940, in Cherokee County, North Carolina, defendant Theodore Woodward (alias:

Sweat Woodward), defendant Felton Moore Woodward (alias: John M. Cash) and defendant Earl Hubbard met defendant James Gordon Parr in Barnes Chapel, North Carolina, and took him into the automobile in which they were driving.

49. On or about April 22, 1940, in Cherokee County, North Carolina, defendant Felton Moore Woodward (alias: John M. Cash), defendant Earl Hubbard, defendant Theodore Woodward (alias: Sweat Woodward), and defendant James Gordon Parr drove in an automobile to a point in North Carolina near Barnes Chapel, Cherokee County, North Carolina, where said defendants named in this overt act obtained dynamite or powder and fuse to be used in dynamiting power poles and power lines of the Tennessee Valley Authority in Fannin County, Georgia.

50. On or about April 22, 1940, in Cherokee County, North Carolina, defendant James Gordon Parr and defendant Earl Hubbard went to a hollow stump at a point in North Carolina near Barnes Chapel, Cherokee County, North Carolina, and took from said hollow stump about 101 sticks, more or less, of dynamite; and 100 feet, more or less, of fuse, and loaded same in an automobile in which defendant Felton Moore Woodward (alias: John M. Cash), defendant James Gordon Parr, defendant Earl Hubbard and defendant Theodore Woodward (alias: Sweat Woodward) were waiting.

51. On or about April 22, 1940, in Cherokee County, North Carolina, defendant Felton Moore Woodward (alias: John M. Cash), defendant Theodore Woodward

(alias: Sweat Woodward), defendant James Gordon Parr and defendant Earl Hubbard drove in an automobile from a point in North Carolina near Barnes Chapel, Cherokee County, North Carolina, to the home of defendant Joel Martin Simonds in Cherokee County, North Carolina.

52. On or about April 22, 1940, in Cherokee County, North Carolina, defendant Felton Moore Woodward (alias: John M. Cash) and defendant Earl Hubbard took from an automobile about 101 sticks, more or less, of dynamite and about 100 feet, more or less, of fuse, and hid the same in a garage at the home of defendant Joel Martin Simonds.

53. On or about April 23, 1940, in Polk County, Tennessee, defendant John Edward Simonds (alias: Ed Simonds), defendant Robert Lee Ballew and defendant John David Queen left Copperhill, Tennessee, to go to the home of defendant Joel Martin Simonds in Cherokee County, North Carolina, and met together at defendant Joel Martin Simonds' home.

54. On or about April 23, 1940, in Cherokee County, North Carolina, defendant John David Queen, defendant Joel Martin Simonds, defendant Robert Lee Ballew and defendant James Gordon Parr went into the garage of defendant Joel Martin Simonds and obtained and divided amongst themselves in one-half portions about 101 sticks, more or less, of dynamite, and 100 feet, more or less, of fuse.

55. On or about April 23, 1940, in Cherokee County, North Carolina, a defendant Joel Martin Simonds loaned to defendants John Edward Simonds (alias: Ed Si-

monds), John David Queen, Robert Lee Ballew and James Gordon Parr, a shotgun.

56. On or about April 23, 1940, in Cherokee County, North Carolina, defendant John Edward Simonds (alias: Ed Simonds), defendant John David Queen, defendant Robert Lee Ballew and defendant James Gordon Parr left Cherokee County, North Carolina, and walked to the Hot House Creek section of Fannin County, Georgia.

57. On or about April 24, 1940, in Fannin County, Georgia, defendant John Edward Simonds (alias: Ed Simonds), defendant John David Queen, defendant Robert Lee Ballew, and defendant James Gordon Parr placed dynamite or powder around four legs of a steel power tower owned by the Tennessee Valley Authority, attached dynamite caps and fuse thereto, ignited the same and thereby exploded said dynamite, which explosion resulted in the damage and destruction of said Tennessee Valley Authority power tower and transmission lines attached thereto.

And so the grand jurors aforesaid, upon their oath aforesaid, say that the defendants named herein in this indictment throughout the period of time and at the place and in the manner and form aforesaid, unlawfully and feloniously and continuously conspired to commit offenses against the United States of America and did acts to effect the objects of their conspiracy; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

(S) J. B. Frazier, Jr.,
United States Attorney.

A True Bill:

(S) J. C. Marlow
Foreman.

Pleas of Defendants.

Entered November 14, 1940.

Came the United States Attorney and came the defendants each in proper person and by attorney and upon being arraigned for plea, each say they are not guilty in manner and form as charged in the indictment, and of this they put themselves on the country and the District Attorney doth the like. Whereupon it is ordered that the case be placed on the calendar for hearing.

Plea of Defendant Woodward.

Entered November 15, 1940.

Came the United States Attorney and came the defendant in proper person and by attorney and upon being arraigned for plea says he is not guilty in manner and form as charged in the indictment, and of this he puts himself on the country and the District Attorney doth the like. Whereupon it is ordered that the cause be placed on the calendar for hearing.

Order Impaneling Jurors.

Entered January 13, 1941.

Came the United States Attorney and came the defendants each in proper person and by attorneys, and this cause coming on to be heard upon the plea of not guilty made by each defendant, came the following jury, to-wit: Bert L. Millican, Sam P. Ashley, Ben H. White, Elbert L. Hunt, Albert Ashworth, John B. Kennedy, Rufus Elsea, James W. Collins, Edward B. Strickland, Earl Simpson, James H. Harrison and Myer Yudd, good and

lawful men, citizens, householders or freeholders of the Southern Division of the Eastern District of Tennessee, who were duly tried, impaneled and sworn to try the issues joined between the parties; and it appearing to the Court that the trial of this cause will not be concluded in one day, by consent of all parties it was ordered that two alternate jurors be impaneled and sworn to sit during the trial, but not to participate in the deliberation of the jury unless ordered to do so by the court as provided by Statute in cases of emergency. Thereupon Roy A. Adams, and Walter Shipley, good and lawful men, citizens, householders or freeholders of the Southern Division of the Eastern District were duly tried, impaneled and sworn to sit during the trial.

Thereupon part of the evidence having been heard, and the hour of adjournment having arrived, said jury was respited until nine o'clock tomorrow morning.

Order Respiting Jury.

Entered January 14, 1941.

Came the United States Attorney and came the defendants each in proper person and by attorney, and came the same jury as upon yesterday, who having heard further evidence, but not all of same, same jury was respited until nine o'clock tomorrow morning.

Order Respiting Jury.

Entered January 15, 1941.

Came the United States Attorney and came the defendants each in proper person and by attorney, and came the same jury as upon yesterday, who having heard a

portion of the evidence but not all of same, and the hour of adjournment having arrived, said jury was respited until Friday morning, January 17, 1941.

Order Respiting Jury.

Entered January 17, 1941.

Came the United States Attorney and came the defendants each in proper person and by attorney, and came the same jury as upon Wednesday, January 15, 1941, who having heard part of the evidence, but not all of same, and the hour of adjournment having arrived, said jury was respited until Monday morning, January 20, 1941.

Order Respiting Jury.

Entered January 20, 1941.

Came the United States Attorney and came the defendants each in proper person and by attorney, and came the same jury as upon yesterday, who having heard a portion of the evidence but not all of same, and the hour of adjournment having arrived, said jury was respited until Tuesday morning, January 21, 1941.

Order Respiting Jury.

Entered January 21, 1941.

Came the parties by their attorneys and came the same jury as upon yesterday, who having heard all the plaintiff's evidence and at the close of same came the defendants, James Gordon Parr, Clyde Huffman, Clint Huffman, Leslie B. Green, Tate C. Green, Benjamin Costin Cross, Joel M. Simonds, Theodore Woodward, Marion L. Ellis, Van D. Jones, John E. McGhee, Thomas Wayne

Henry, William Rans Smith, by their attorneys, and moved the Court to direct a verdict of not guilty in their favor upon the ground of insufficient evidence. Upon consideration of said motion, the United States Attorney consenting thereto, the Court sustained said motion as to defendants Van D. Jones, James Gordon Parr and Benjamin Costin Cross.

Whereupon came the defendants, Mitchell C. Anderson, John E. Simonds, Felton Moore Woodward, Earl Hubbard, John David Queen, Robert Lee Rhodes, Robert Lee Ballew, Tate C. Green, Leslie Bryant Green, Clyde L. Huffman, William Clint Huffman, John E. McGhee, Marion Luther Ellis, Joel Martin Simonds, Thomas Wayne Henry, Meggs Collins, William Rans Smith and Theodore Woodward, by their attorneys, and moved the Court to direct a verdict of not guilty in their favor upon the ground of insufficient evidence. Upon consideration of which the Court sustained said motion as to defendants Tate C. Green, Leslie Bryant Green, Clyde L. Huffman and William Clint Huffman and overruled said motion as to defendants, Mitchell Clifton Anderson, John Edward Simonds, Felton Moore Woodward, Earl Hubbard, John David Queen, Robert Lee Rhodes, Robert Lee Ballew, John E. McGhee, Marion Luther Ellis, Joel Martin Simonds, Thomas Wayne Henry, Meggs Collins, William Rans Smith, and Theodore Woodward.

Thereupon the Court instructed the jury and said jury did return a verdict of not guilty as to the defendants, Van D. Jones, James Gordon Parr, Benjamin Costin Cross, Tate C Green, Leslie Bryant Green, Clyde L. Huff-

man and William Clint Huffman, and it was ordered that said defendants go hence as to this case.

The jury having heard further evidence and the hour of adjournment having arrived, said jury was respited to 9 o'clock on the morning of January 22, 1941.

Order Respiting Jury.

Entered January 22, 1941.

Came the United States Attorney and came the above named defendants each in proper person and by attorney, and came the same jury as upon yesterday who having heard part of the evidence, but not all of same, and the hour of adjournment having arrived, said jury was respited until 9 o'clock on the morning of January 23, 1941.

Order Respiting Jury.

Entered January 23, 1941.

Came the United States Attorney and came the above named defendants each in proper person and by attorney, and came the same jury as upon yesterday who having heard part of the evidence, but not all of same, and the hour of adjournment having arrived, said jury was respited until 9 o'clock on the morning of January 24, 1941.

Order Respiting Jury.

Entered January 24, 1941.

Came the United States Attorney and came the above named defendants each in proper person and by attorneys and came the same jury as upon yesterday who having heard the remainder of the defendants' evidence and at the close of same came the defendants by their attorneys

and moved the Court to exclude from the testimony signed confessions of Robert Lee Ballew, Earl Hubbard, John David Queen, Robert Lee Rhodes, John Edward Simonds, and Felton Moore Woodward on the grounds same were obtained under duress, and after due consideration, Court overruled said motion whereupon the plaintiff offered evidence in rebuttal. And the hour of adjournment having arrived, said jury was respited until 9 A. M. on the morning of Monday, January 27.

Order Respiting Jury.

Entered January 27, 1941.

Came the parties by their attorneys and came the same jury as upon January 24, 1941, and after hearing the remainder of the evidence, and at the close of same came defendants by their attorneys and again made motion to exclude from the testimony the six signed statements introduced in evidence, which motion was overruled by the Court; exceptions noted for defendants; thereupon Theodore Woodward by his attorneys made motion for a verdict of not guilty in his favor because of insufficient evidence and after due consideration, the United States Attorney consenting thereto, the Court instructed the jury to and the jury did return a verdict of not guilty as to defendant Theodore Woodward and it was ordered that said Theodore Woodward go hence as to this case.

Thereupon came each of the above named defendants, except Theodore Woodward, by their attorneys and made separate motions for verdicts of not guilty in their favor,

all of which motions, after due consideration were by the Court overruled and exceptions noted for defendants.

Whereupon argument of the case was begun by counsel, but not concluded and the hour of adjournment having arrived, the jury was respited to 9:00 A. M. Tuesday, January 28, 1941.

Order Respiting Jury.

Entered January 28, 1941.

Came the United States Attorney and came each of the defendants in proper person and by attorneys and the case coming on to be further heard came the same jury as upon January 27, 1941, who having heard all the evidence and the remainder of the argument of counsel and received the charge of the Court; and at the close of the charge the Court dismissed the two alternate jurors selected, impaneled and sworn to sit during the trial of the case but not to participate in the deliberation of the jury unless so directed by the Court, as provided by statute in case of emergency, and the hour of adjournment having arrived, the said regular jury was respited until January 29, 1941, at 9 a. m.

Jury Verdict.

Entered January 29, 1941.

Came the United States Attorney and came the defendants, Mitchell C. Anderson, John Edward Simonds, Felton Moore Woodward, Earl Hubbard, John David Queen, Robert Lee Rhodes, Robert Lee Ballew, John E. McGhee, Marion Luther Ellis, Joel Martin Simonds, Thomas Wayne Henry, Meggs Collins, William Rans Smith, each in proper

person and by their attorneys and came the same regular jury as yesterday; and the said twelve regular jurors having fully considered of their verdict and having been instructed to return a verdict as to each defendant, upon their oaths do say that they find the defendants Mitchell C. Anderson, John Edward Simonds, Felton Moore Woodward, Earl Hubbard, John David Queen, Robert Lee Rhodes, Robert Lee Ballew, Marion Luther Ellis guilty of conspiring to violate the laws of the United States as charged in the indictment; and said jurors upon their oaths do further say that they find the defendants, John E. McGhee, Joel Martin Simonds, Thomas Wayne Henry, Meggs Collins, and William Rans Smith, not guilty in manner and form as charged in the indictment.

Whereupon the Court ordered that defendants John E. McGhee, Joel Martin Simonds, Thomas Wayne Henry, Meggs Collins, and William Rans Smith go hence as to this case.

Thereupon the defendants, Mitchell C. Anderson John Edward Simonds, Felton Moore Woodward, Earl Hubbard, John David Queen, Robert Lee Rhodes, Robert Lee Ballew, Marion Luther Ellis, by their attorneys gave notice of the filing of motion for new trial and said motion by agreement was set for hearing at 9 o'clock on February 3, 1941.

Upon application of said defendants by their attorneys it was ordered that judgment as to them be reserved until February 3, 1941, pending hearing on the motion for new trial, and that each of said defendants be taken into custody by the United States Marshal pending making of bonds

before the United States Commissioner for their appearance in Court on February 3, 1941.

Judgment.

Entered February 3, 1941.

On this 3rd day of February, 1941, came the United States Attorney, and the defendant Mitchell Clifton Anderson appearing in proper person, and by attorneys and,

The defendant having been convicted on verdict of guilty returned January 29, 1941, of the offense charged in the indictment in the above-entitled cause, to-wit

Conspiring to violate the laws of the United States of America, particularly Section 82 of Title 18, United States Code Annotated, as charged in the one count of the indictment, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the pen. or reformatory type to be designated by the Attorney General or his authorized representative for the period of Two (2) Years from and after this date.

It is further ordered that he pay a fine of $5,000 in lieu of the costs of the cause and that said defendant be further imprisoned, until payment of said fine, or fine and costs, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the defendant be enlarged upon his entering in to bond in the sum of $5,000 with good and sufficient sureties, approved by the Clerk of the Court, pending the appeal of this cause.

(Signed) /s/ Leslie R. Darr,
Judge.

Judgment.

Entered February 3, 1941.

On this 3rd day of February, 1941, came the United States Attorney, and the defendant John Edward Simonds appearing in proper person, and by attorneys and,

The defendant having been convicted on verdict of guilty returned January 29, 1941, of the offense charged in the indictment in the above-entitled cause, to wit

Conspiring to violate the laws of the United States of America, particularly, Section 82 of Title 18, United States Code Annotated, as charged in the one count of the indictment and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court. It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the pen or reformatory type to be designated by the Attorney General or his authorized representative for the period of Two (2) Years from and after this date.

It is further ordered that he pay a fine of $1,000 in lieu of the costs of the cause and that said defendant be further imprisoned until payment of said fine, or fine and costs, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the defendant be enlarged upon his entering into bond in the sum of $3,000 with good and sufficient sureties, approved by the Clerk of the Court, pending the appeal of this cause.

(Signed) Leslie R. Darr,
Judge.

Judgment.

Entered February 3, 1941.

On this 3rd day of February, 1941, came the United States Attorney, and the defendant Felton Moore Woodward appearing in proper person, and by attorneys and,

The defendant having been convicted on verdict of guilty, returned January 29, 1941, of the offense charged in the indictment in the above-entitled cause, to wit

Conspiring to violate the laws of the United States of America, particularly Section 82 of Title 18, United States Code Annotated, as charged in the one count of the indictment and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed

to the custody of the Attorney General for imprisonment in an institution of the pen. or reformatory type to be designated by the Attorney General or his authorized representative for the period of Two (2) Years from and after this date.

It is further ordered that he pay a fine of $1,000 in lieu of the costs of the cause and that said defendant be further imprisoned until payment of said fine, or fine and costs, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the defendant be enlarged upon his entering into bond in the sum of $3,000 with good and sufficient sureties, approved by the Clerk of the Court, pending the appeal of this cause.

(Signed) Leslie R. Darr,
Judge.

Judgment.

Entered February 3, 1941.

On this 3rd day of February, 1941, came the United States Attorney, and the defendant Earl Hubbard appearing in proper person, and by attorneys and,

The defendant having been convicted on verdict of guilty returned January 29, 1941, of the offense charged in the indictment in the above-entitled cause, to wit

Conspiring to violate the laws of the United States of America, particularly Section 82 of Title 18, United States Code Annotated, as charged in the one count of the indictment and the defendant having been now asked whether he has anything to say why judgment should

not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the pen. or reformatory type to be designated by the Attorney General or his authorized representative for the period of Two (2) Years from and after this date.

It is further ordered that he pay a fine of $1,000 in lieu of the costs of the cause and that said defendant be further imprisoned until payment of said fine, or fine and costs, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the defendant be enlarged upon his entering into bond in the sum of $3,000 with good and sufficient sureties, approved by the Clerk of the Court, pending the appeal of this cause.

(Signed) Leslie R. Darr,
Judge.

Judgment.

Entered February 3, 1941.

On this 3rd day of February, 1941, came the United States Attorney, and the defendant John David Queen appearing in proper person, and by attorneys and

The defendant having been convicted on verdict of guilty returned January 29, 1941, of the offense charged in the indictment in the above-entitled cause, to wit

Conspiring to violate the laws of the United States of America, particularly Section 82 of Title 18, United States Code Annotated, as charged in the one count of the indictment and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the pen. or reformatory type to be designated by the Attorney General or his authorized representative for the period of Two (2) Years from and after this date.

It is further ordered that he pay a fine of $1,000 in lieu of the costs of the cause and that said defendant be further imprisoned until payment of said fine, or fine and costs, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the defendant be enlarged upon his entering into bond in the sum of $3,000 with good and sufficient sureties, approved by the Clerk of the Court, pending the appeal of this cause.

(Signed) Leslie R. Darr,
Judge.

Judgment.

Entered February 3, 1941.

On this 3rd day of February, 1941, came the United States Attorney, and the defendant Robert Lee Rhodes appearing in proper person, and by attorney and,

The defendant having been convicted on verdict of guilty returned January 29, 1941, of the offense charged in the indictment in the above-entitled cause, to wit

Conspiring to violate the laws of the United States of America, particularly Section 82 of Title 18, United States Code Annotated, as charged in the one count of the indictment and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the pen. or reformatory type to be designated by the Attorney General or his authorized representative for the period of Two (2) Years from and after this date.

It is further ordered that he pay a fine of $1,000 in lieu of the costs of the cause and that said defendant be further imprisoned until payment of said fine, or fine and costs, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the defendant be enlarged upon his entering into bond in the sum of $3,000 with good and sufficient sureties, approved by the Clerk of the Court, pending the appeal of this cause.

(Signed) Leslie R. Darr,
Judge.

Judgment.

Entered February 3, 1941.

On this 3rd day of February, 1941, came the United States Attorney, and the defendant Marion Luther Ellis appearing in proper person, and by attorneys

The defendant having been convicted on verdict of guilty returned January 29, 1941, of the offense charged in the indictment in the above-entitled cause, to wit

Conspiring to violate the laws of the United States of America, particularly Section 82 of Title 18, United States Code Annotated, as charged in the one count of the indictment and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the pen. or reformatory type to be designated by the Attorney General or his authorized representative for the period of Fifteen (15) Months from and after this date.

It is further ordered that he pay the costs of the cause and that said defendant be further imprisoned until payment of said fine, or fine and costs, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the defendant be enlarged upon his entering into bond in the sum of $3,000 with

good and sufficient sureties, approved by the Clerk of the Court, pending the appeal of this cause.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) Leslie R. Darr,
Judge.

Judgment.

Entered February 3, 1941.

On this 3rd day of February, 1941, came the United States Attorney, and the defendant Robert Lee Ballew, appearing in proper person, and by attorneys and,

The defendant having been convicted on verdict of guilty returned January 29, 1941, of the offense charged in the indictment in the above-entitled cause, to wit

Conspiring to violate the laws of the United States of America, particularly Section 82 of Title 18, United States Code Annotated, as charged in the one count of the indictment and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the pen. or reformatory type to be designated by the Attorney General or his authorized rep-

resentative for the period of Two (2) Years from and after this date.

It is further ordered that he pay a fine of $1,000 in lieu of the costs of the cause and that said defendant be further imprisoned until payment of said fine, or fine and costs, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the defendant be enlarged upon his entering into bond in the sum of $3,000 with good and sufficient sureties, approved by the Clerk of the Court pending the appeal of this cause.

(Signed) Leslie R. Darr,
Judge.

Motion for a New Trial.

Filed February 1, 1941.

Come the defendants jointly and severally and reducing to writing motion for a new trial, notice of which has heretofore been given, moves the court to grant each of them a new trial for the following reasons:

I.

There is no evidence to support the verdict of the jury and the verdict is contrary to law.

(a) The court erred in refusing to direct the jury to return a verdict of not guilty for each and every defendant at the conclusion of the Government's proof and at the conclusion of all the proof in the case.

(1) The court erred in failing and refusing to direct the jury to return a verdict of not guilty at conclu-

sion of the Government's proof and at the conclusion of all the proof in the case because there was no evidence on which a conviction might have been had; and no competent evidence before the jury to show the *corpus delicti* of the crime alleged, to-wit: a conspiracy and no proof to show if a conspiracy was shown that the defendant, Mitchell Clifton Anderson, had any connection therewith.

(2) The court erred in refusing to direct the jury to return a verdict of not guilty as to the defendants, John Edward Simonds, Felton Moore Woodward and Earl Hubbard, for the reason that there was no competent proof on which the court could submit the case as to them to the jury; no proof of a conspiracy or of the *corpus delicti* and the jury would not have been authorized to return a verdict of guilty on an uncorroborated confession or admission.

(3) The court erred in failing and refusing to direct the jury to return a verdict of not guilty at the conclusion of the Government's proof and at the conclusion of all the proof in the case because there was no competent proof to show that these defendants, Robert Lee Rhodes, Robert Lee Ballew and John David Queen, or any one of them, had any connection with a conspiracy or that they at any time combined or confederated or were at any time engaged in a conspiracy. The jury would not have been authorized to return a verdict of guilty as to said defendants or either of them on an uncorroborated confession without first having independent proof of the *corpus delicti*, that is, that there was

a conspiracy and too that these defendants had some connection therewith."

II.

The court erred in admitting to the consideration of the jury certain alleged statements made by the defendants, John Edward Simonds, Felton Moore Woodward and Earl Hubbard.

(a) All the proof in the case showed that the statement made by Earl Hubbard was made under duress and threats and his signature secured by intimidation and by threats, hopes and promises of reward. The court further erred in refusing to exclude said statement from the consideration of the jury at the close of the Government's proof and again at the close of all the proof in the case.

(b) All the proof in the case showed that the statement made by Felton Moore Woodward was made under duress and threats and his signature secured by intimidation and by threats, hopes and promises of reward. The court further erred in refusing to exclude said statement from the consideration of the jury at the close of the Government's proof and again at the close of all the proof in the case.

(c) All the proof in the case showed that the statement made by John Edward Simonds was made under duress and threats and his signature secured by intimidation and by threats, hopes and promises of reward. The court further erred in refusing to exclude said statement from the consideration of the jury at the close of

the Government's proof and again at the close of all the proof in the case.

III.

The court erred in admitting for the consideration of the jury certain statements alleged to have been made by John David Queen, Robert Lee Rhodes and Robert Lee Ballew. Said statements were obtained by duress, compulsion and hope or promise of reward and each of said statements should have been excluded from the consideration of the jury, and the court further erred in failing and refusing at the conclusion of all of the Government's proof and of all the proof in the case to withdraw said statements from the consideration of the jury and instruct the jury accordingly.

IV.

The court erred in failing and refusing to direct the jury to return a verdict of not guilty at the conclusion of the Government's proof and at the conclusion of all the proof in the case as to the defendant, Marion Luther Ellis. There was no competent evidence before the jury to show that said defendant had any connection with the conspiracy and such circumstances as were adduced in proof by the Government were equally as consistent with the innocence of said defendant as with his guilt.

V.

The court erred in sustaining exception to the following question asked the Government's witness, B. E. Biggs, Sheriff of Polk County as follows:

"Q. I will ask you this question, Sheriff, if the Copper Company wasn't as a matter of fact paying those deputies you had there?"

Mr. Frazier: I object to that.

The Court sustained the objection.

Mr. Baker: We want to except to your Honor's ruling."

The above evidence was pertinent to the issues involved in the case for the reason these defendants were engaged in a strike with the Tennessee Copper Company, and had been kept in the custody of armed guards who were paid by the Tennessee Copper Company, in a building owned by the Tennessee Copper Company, and the evidence was competent to show their mental condition, and feeling of the defendants so incarcerated, to-wit: Earl Hubbard, Felton Moore Woodward, John Edward Simonds, Robert Lee Ballew, Robert Lee Rhodes and John David Queen. The evidence was competent to bear on the question of whether their statements were their free and voluntary act or whether they were intimidated by said guards, paid by said Tennessee Copper Company in cooperation with agents of the United States Government.

VI.

The court erred in sustaining exception to the following question asked the witness, B. E. Biggs, as follows:

"Q. Now, Sheriff, for some period prior to these explosions and all during the time of these explosions I will ask you if you didn't have a standing order on file that all your deputies were to search all these defendants' cars that were found out at night?

Mr. Frazier: We object to that.

The Court sustained the objection.

Mr. Baker: That is asked for this purpose, there is a great deal of testimony some of the defendants were transporting powder back and forth through Polk County. I want to show by this witness those were stopped.

The Court: Sustain the exception.

Mr. Baker: Except to your Honor's ruling."

The above evidence was competent, pertinent and material to the issues involved because it was the contention of the Government that various quantities of powder or dynamite had been transported at various times through Polk County, and the purpose of the evidence was to show that at any time one of the defendants mentioned in the indictment or anybody else connected with them was at large after dark his car was searched, and the evidence would have shown that powder or dynamite was not being transported through Polk County, or certainly been a strong circumstance to so show.

VII.

The court erred in failing and refusing to give and charge defendants' Request No. 1 as follows:

"United States District Court, Eastern District of Tennessee, Southern Division. United States of America vs. Mitchell Clifton Anderson et al. No. 8100.

Defendants' Request to Charge No. 1.

Defendants request the Court to charge the jury as follows:

The Court has allowed certain statements, confessions or admissions by some of the defendants to be admitted to you in evidence. If a confession or admission is made and there is no conflict in the evi-

dence as to the manner of its procurement, then the question of its admissibility is a question of law for the court to pass on. If there is a conflict in the evidence as to whether the confession or admission was voluntarily made then the court submits it to the jury. The court instructs you that before you can consider the confessions of the defendants or any of them, you must first find that they were freely and voluntarily made, without fear or compulsion, or hope of reward. In determining this matter you will take into consideration all the facts and circumstances in evidence before you, bearing on this subject; that is the way and manner in which such confession or admission was obtained. It is not necessary that the defendants or any one of them should have been warned that what he said would be used against him. It is sufficient if the confession was voluntarily made, though the defendants or any one of them as to his particular confession or admission, were not warned or advised that he or they had the right to remain silent. Not to have had the aid of counsel or that the confession was made to an officer while in custody, or drawn out by cross questioning put to the defendant or defendants, or that the defendant was questioned more than once or during the night or for long periods of time would not in themselves render the confessions or admissions involuntary. But if by repeated questioning over long periods of time and during the night, or threats, or promises or hope of reward held out to the defendant or defendants, their will and mind was so impaired and enslaved that the statements introduced by the Government are not their free and voluntary act then you will entirely disregard such confessions or admissions. In passing on this question you will consider the age, experience, education, station in life and physical condition of the defendants; whether they had friends, relatives or counsel present; whether the questioning was carried on in an unreasonable manner and at unusual hours; whether or not they or any of them had

been given drugs; whether they had sleep or food; whether or not they were kept in a private building or abused or cursed and forced to do other acts against their will.

If you conclude from the proof beyond a reasonable doubt that the confessions or admissions were the free and voluntary act of the defendant or defendants, then you will give them such weight as you think they are entitled to in your consideration of this case. If you conclude that the confessions or admissions were not the free or voluntary confessions or admissions of the defendants or that they were given in consideration of leniency or hope of reward then you will entirely disregard such confessions and not consider them at all in your deliberations.

In passing on the competency of the confessions in the manner above set out you will consider each confession separately.

I charge you further that confessions of any kind are treated with distrust and should be scanned with care. This is true because at the time a confession is usually made, the defendant is in custody and usually surrounded by officers who are seeking to obtain a confession from him.

E. B. Baker,
J. M. C. Townsend,
W. T. Thrasher,
J. A. Lipscomb,
R. C. Hunt,
Attorneys for the Defendants.

Declined except as included in main charge.

Leslie R. Darr,
United States District Judge."

Said charge was pertinent and applicable to the facts in the case and particularly in view of the fact it con-

tained in the charge that it was necessary for the jury to be satisfied that the confessions or admissions were free and voluntary acts, beyond a reasonable doubt, and because it further sets out that confessions are to be treated with distrust and scanned with care. Defendants and each of them excepted at the conclusion of the charge to the court's action in failing to give said charge.

VIII.

The court erred in failing and refusing to charge the jury defendants' request No. 3, which is as follows:

> "That a defendant cannot be convicted on an uncorroborated confession. By that is meant there must be independent proof outside of the confession to establish the *corpus delicti*, that is the body of the crime. Applying the rule specifically to this case you gentlemen would not be authorized to convict the defendant on an uncorroborated confession unless the Government had first shown that there was a conspiracy and that these defendants had some connection with the conspiracy, outside of the confession or confessions."

Said charge was pertinent and applicable to the facts in the case and the defendants and each of them were prejudiced by the failure of the court to so charge because the defendants were before the jury on alleged confessions which were not corroborated by any other proof in the case, and the *corpus delicti* had not otherwise been proven. The defendants duly excepted to the action of the court in refusing to give said charge at the conclusion of the court's charge.

Wherefore defendants and each of them move the court to set aside the verdict of the jury and grant each of them a new trial.

E. B. Baker,
J. M. C. Townsend,
J. A. Lipscomb,
W. T. Thrasher,
Robert C. Hunt,
Attorneys for the Defendants.

Received copy of above motion this February 1, 1941.

/s/ J. B. Frazier, Jr.,
United States Attorney.

Notice of Appeal.

Filed February 3, 1941.

Names and Addresses of Appellants:

Mitchell Clifton Anderson, Route 1, Box 106, Birmingham, Alabama.

John Edward Simonds, 38 Maple Avenue, Rockaway, New Jersey.

Earl Hubbard, Isabella, Tennessee.

Felton Moore Woodward, Copperhill, Tennessee.

Marion Luther Ellis, 1404 Linden Avenue, Baltimore, Maryland.

Robert Lee Ballew, Isabella, Tennessee.

John David Queen, Copperhill, Tennessee.

Robert Lee Rhodes, Copperhill, Tennessee.

Names and Addresses of Appellants' Attorneys:

E. B. Baker, 309 Chattanooga Bank Building, Chattanooga, Tennessee.

J. M. C. Townsend, 309 Chattanooga Bank Building, Chattanooga, Tennessee.

Wilkes T. Thrasher, 309 Chattanooga Bank Building, Chattanooga, Tennessee.

J. A. Lipscomb, Bessemer, Alabama.

Offense:

Conspiracy in violation Section 88, Title 18, United States Code.

Date of Judgment:

Verdict of Jury finding defendants guilty January 29, 1941. Sentence imposed February 3rd, 1941.

Description of Judgment or Sentence:

Conviction conspiracy to violate Section 82, as amended, United States Code, in violation Section 88, United States Code. Sentence for each defendant as follows:

Mitchel Clifton Anderson: 2 years and $5,000 fine.
John Edward Simonds: 2 years and $1,000 fine.
Earl Hubbard: 2 years and $1,000 fine.
Felton Moore Woodward: 2 years and $1,000 fine.
Marion Luther Ellis: 15 months.
Robert Lee Ballew: 2 years and $1,000 fine.
John David Queen: 2 years and $1,000 fine.
Robert Lee Rhodes: 2 years and $1,000 fine.

Name of Prison Where Now Confined:

All defendants on bail.

We the above named appellants hereby appeal to the United States Circuit Court of Appeals for the Sixth

Circuit from the Judgment above mentioned on the grounds set forth below, and hereto attached.

Mitchell Clifton Anderson,
John Edward Simonds,
Earl Hubbard,
Felton Moore Woodward,
Marion Luther Ellis,
Robert Lee Ballew,
John David Queen,
Robert Lee Rhodes,
Appellants.

This the Third day of February, 1941.

Grounds of Appeal:

I.

There is no evidence to support the verdict of the jury and the verdict is contrary to law.

(a) The Court erred in refusing to direct the jury to return a verdict of not guilty for each and every defendant at the conclusion of the Government's proof, and at the conclusion of all the proof in the case.

(1) The Court erred in failing and refusing to direct the jury to return a verdict of not guilty, at the conclusion of the Government's proof and at the conclusion of all the proof in the case, as to the defendant, Mitchel Clifton Anderson, because there was no evidence on which a conviction might have been had; and no competent evidence before the jury to show the *corpus delicti* of the crime alleged, that is a conspiracy, and no proof that if a conspiracy was shown that said defendant had any connection with same.

(2) The Court erred in refusing to direct the jury to return a verdict of not guilty as to the defendants, John Edward Simonds, Felton Moore Woodward, and Earl Hubbard, for the reason that there was no competent proof which the Court could submit the case as to them to the jury; no proof of a conspiracy or of the *corpus delicti*, and the jury would not have been authorized to return a verdict of guilty on an uncorroborated confession or admission.

(3) The Court erred in failing and refusing to direct the jury to return a verdict of not guilty at the conclusion of the Government's proof and at the conclusion of all the proof in the case, as to the defendants, Robert Lee Rhodes, Robert Lee Ballew, and John David Queen, because there was no competent proof to show that said defendants, or either of them, had any connection with a conspiracy or that they at any time combined or confederated or were at any time engaged in a conspiracy. The jury would not have been authorized to return a verdict of guilty as to said defendants, or either of them, on an uncorroborated confession without first having independent proof of the *corpus delicti*, that is that there was a conspiracy and that these defendants had some connection therewith.

(4) The Court erred in failing and refusing to direct the jury to return a verdict of not guilty at the conclusion of the Government's proof and at the conclusion of all the proof in the case as to the defendant, Marion Luther Ellis. There was no competent evidence before the jury to show that said defendant had any

connection with the conspiracy and such circumstances as were adduced in proof by the Government were equally as consistent with the innocence of said defendant as with his guilt.

II.

The Court erred in admitting to the consideration of the jury certain alleged statements made by the defendants, John Edward Simonds, Felton Moore Woodward and Earl Hubbard.

(a) All the proof in the case showed that the statement made by Earl Hubbard was made under duress and threats, and his signature secured by intimidation and by threats, hopes, and promises of reward, and while he was held prisoner in a private building, a building owned by his enemies. The Court further erred in refusing to exclude said statement from the consideration of the jury at the close of the Government's proof and again at the close of all the proof in the case, on motion by said defendant.

(b) All the proof in the case showed that the statement made by Felton Moore Woodward was made under duress and threats and his signature secured by intimidation and by threats, hope and promise of reward and while said defendant was held in custody in a private jail by his enemies and without any charge against him. The Court further erred in refusing to exclude said statement from the consideration of the jury at the close of the Government's proof and again at the close of all the proof in the case.

(c) All the proof in the case showed that the statement made by John Edward Simonds was made under duress and threats and his signature secured by intimidation and by threats, hopes and promises of reward and while said defendant was held in custody in a private jail by his enemies and without any charge against him. The Court further erred in refusing to exclude said statement from the consideration of the jury at the close of the Government's proof and again at the conclusion of all the proof in the case.

III.

The Court erred in admitting for the consideration of the jury certain statements alleged to have been made by John David Queen, Robert Lee Rhodes and Robert Lee Ballew. Said statements were obtained by duress, compulsion, and hope or promise of reward and each of said statements should have been excluded from the consideration of the jury, and said statements were made when said defendants were in custody in a private jail, and the Court further erred in failing and refusing to exclude said statements from the consideration of the jury at the conclusion of the Government's proof and at the conclusion of all the proof in the case, on proper motion made by said defendants.

IV.

The Court erred in sustaining exception to the following questions asked the Government's witness, B. E. Biggs, as follows:

"Now Sheriff, for some period prior to these explosions and all during the time of these explosions I will ask you if you didn't have a standing order on file that all your deputies were to search all these defendants' cars that were found out at night?

Mr. Frazier: We object to that.

Court: Exception sustained.

Mr. Baker: That is asked for this purpose, there is a great deal of testimony some of the defendants were transporting powder back and forth through Polk County. I want to show by this witness those were stopped.

Court: Sustain the exception.

Mr. Baker: Except to Your Honor's ruling."

The Court erred in sustaining exception to the following question asked the Government's witness, B. E. Biggs, Sheriff of Polk County, as follows:

"I will ask you this question, Sheriff, if the Copper Company wasn't as a matter of fact paying those deputies you had there?

Mr. Frazier: I object to that.

Court: Sustain the exception.

Mr. Baker: We want to except to Your Honor's ruling."

The Court erred in sustaining exception to the following question asked the defendant, Marion Luther Ellis:

"Q. Since the Government has asked you about it, how many times had you been searched before that time?

Mr. Badgett: I didn't ask about that, we object.

By Court: Objection sustained.

Mr. Baker: We except to the Court's ruling.

Q. Had you been searched before that time?

Mr. Badgett: We object to that because immaterial.

By Court: I don't see the materiality of it.

Mr. Baker: I would like to have the jury excused and go into that matter.

By Court: The Court does not think it is competent, even to go into the record. Objection is sustained.

Mr. Baker: We except to the Court's ruling."

The Court erred in sustaining exception to the following question asked the Government witness, Pryor Crowe, as follows:

"Q. How many extra deputy sheriffs were put on? (meaning at and during time of strike.)

Mr. Badgett: I renew my objection. That has gone far enough, it is wholly immaterial, and I did not go into that on direct examination.

Mr. Baker: It shows the motion and purpose back of this whole prosecution. We will make it competent.

Mr. Badgett: I object to that statement.

By Court: I sustain the objection. I cannot see where a deputy sheriff or a guard would have anything to do with dynamiting Government property.

Mr. Baker: We will connect it up later. We except to the Court's ruling."

The Court erred in sustaining exception and excluding the following question asked the Government witness, C. L. Campbell, as follows:

"Q. That was the time you were searching everybody's car in the Basin?

Mr. Badgett: We object to that.

The Court: Sustained.

Mr. Baker: Note an exception."

The Court erred in sustaining exception and excluding the following question asked the Government witness, Creed Brock, as follows:

"Q. You were employed there and in charge of a detail of deputy sheriff who were guarding the Copper Company?

A. I was a deputy sheriff up there.

Mr. Frazier: We object to that, that is not material whether he was employed by the Copper Company or not.

By Court: I didn't think so, objection sustained.

Mr. Baker: We note an exception to Your Honor's ruling."

The Court erred in sustaining exception and excluding the following question asked the Government witness, B. E. Biggs, as follows:

"Q. And the first thing you did was to put on about a hundred and fifty or two hundred special deputies, was it not?

A. I put on a number of special deputies.

Q. Can you give me the highest number you had there?

Mr. Frazier: Now, if Your Honor please, I object to that.

The Court: Sustain the objection. I can't see where that is competent here, except it might reflect on the credibility of these confessions, but I don't think we should have too much detail.

Mr. Baker: The Court please, we think it shows the entire situation, and think we ought to be allowed to go into it.

The Court: I don't think so. The investigation was regarding conspiracy to destroy Government property."

The foregoing evidence was all competent and material and vital to the issues involved. It was the theory of the defendants that the Copper Company was in league with and was paying B. E. Biggs, Sheriff of Polk County, to break the strike. That in order to break the strike several hundred men had been employed as Special Deputy Sheriffs, and paid by the Copper Company; that these deputy sheriffs or guards patrolled the highways and searched defendants and all other persons out at night, and searched their homes, all without warrant of law. That when the defendants were arrested they were taken by these same Company Guards or Deputy Sheriffs to a building owned and operated by the Copper Company; that they were arrested without warrants or charges and held in said private jail without charges, and there abused by such guards, and that Federal Bureau of Investigation men came in and aided the Sheriff and the Copper Company; that they were placed in jail, as were many others, and held as they were so that the strike could be broken, and that after days of this sort of treatment some of them finally in utter desperation signed statements which FBI agents and such deputies had previously prepared, on being advised that they would be released if they would sign such statements; that said statements were not true, and that the defendants or any of them had anything to do with destruction of Government property, but that the Copper Company through the Sheriff and the Special deputies or guards blew up the lines in order to get Government agents in and break the strike.

The Court, in the general charge to the jury charged as follows:

"It is in the proof, evidence of a labor dispute going on at the time of the alleged dynamiting of the towers and men were out on strike. This proof has nothing to do with the case, except in this particular. We are not concerned as to the merits or demerits as to the labor trouble between former employees of the Copper Company and the Copper Company and these defendants, and that is admitted in proof for two reasons:

First, from the Government's standpoint as showing a motive why the defendants would enter into a conspiracy to dynamite the towers; and

Second, from the defendants' standpoint of showing a reason for high pressure methods of obtaining confessions and pleas and a reason why others might have dynamited the towers and laid the blame on them."

The Court charged the theory of defendants as follows:

"The defendants say, however, generally that this isn't true.

They say that they were on a strike at that time and that the Copper Company used drastic and high pressure methods by which to win the strike on its side, whereby they had the Sheriff's office with them in the fight and the Sheriff's office through them, had employed a large number of deputies and large number of guards, employed by the Copper Company and paid by the Copper Company and that very high pressure and deceitful methods were used by the Company against these defendants and others in an effort to end the strike. They say the Union was active there but it was a peaceful activity of the Union and these defendants all members thereof were there to see about the distribution of food and medicine and

picketing and matters of that kind, all being peaceful and legal activities. The defendants say they never determined the destruction of any property at any time and never entered into any conspiracy to dynamite any of the power lines and that this high pressure, deceitful method was used to obtain confessions and pleas of guilty of some of them and that they finally decided that was the best way out of it, through representations made to them by the F. B. I. Agents and the Sheriff. Each and all say the Government has not presented sufficient proof to show them guilty of a conspiracy.

They say it is just as reasonable to suppose the Company, through some of its agents had the towers dynamited in order to have the Government send in their agents and lay the blame on the strikers, as it was to think that they did it."

The Court substantially charged the theory of the defendants correctly. However, the theory went to the jury without proof, as hereinabove set out, every effort to prove the theory was met by objection, and such objection sustained by the Court.

V.

The Court erred in failing and refusing to give in charge to the jury defendants' request to charge number one, as follows:

"Defendants request the Court to charge the jury as follows:

The Court has allowed certain statements, confessions or admissions by some of the defendants to be admitted to you in evidence. If a confession or admission is made and there is no conflict in the evidence as to the manner of its procurement then the question of its admissibility is a question of law

for the Court to pass on. If there is a conflict in the evidence as to whether the confession or admission was voluntarily made then the Court submits it to the jury. The Court instructs you that before you can consider the confessions of the defendants or any of them, you must first find that they were freely and voluntarily made, without fear or compulsion, or hope of reward. In determining this matter you will take into consideration all the facts and circumstances in evidence before you bearing on this subject; that is the way and manner in which such confession or admission was obtained. It is not necessary that the defendants or any one of them should have been warned that what he said would be used against him. It is sufficient if the confession was voluntarily made, though the defendants or any one of them as to his particular confession or admission, were not warned or advised that he or they had the right to remain silent. Not to have had the aid of counsel or that the confession was made to an officer while in custody, or drawn out by cross questioning put to the defendant or defendants, or that the defendant was questioned more than once or during the night or for long periods of time would not in themselves render the confessions or admissions involuntary. But if by repeated questioning over long periods of time and during the night, or threats, or promises or hope of reward held out to the defendant or defendants, their will and mind was so impaired and enslaved that the statements introduced by the Government are not their free and voluntary act then you will entirely disregard such confessions or admissions. In passing on this question you will consider the age, experience, education, station in life and physical condition of the defendants; whether they had friends, relatives or counsel present; whether the questioning was carried on in any unreasonable manner and at unusual hours; whether or not they or any of them had been given drugs; whether they had sleep or food; whether or not they were kept in a private building

or abused or cursed and forced to do other acts against their will.

If you conclude from the proof beyond a reasonable doubt that the confessions or admissions were the free and voluntary act of the defendant or defendants, then you will give them such weight as you think they are entitled to in your consideration of this case. If you conclude that the confessions or admissions were not the free or voluntary confessions or admissions of the defendants or that they were given in consideration of leniency or hope of reward then you will entirely disregard such confessions and not consider them at all in your deliberations.

In passing on the competency of the confessions in the manner above set out you will consider each confession separately.

I charge you further that confessions of any kind are treated with distrust and should be scanned with care. This is true because at the time a confession is usually made the defendant is in custody and usually surrounded by officers who are seeking to obtain a confession from him."

Said charge was pertinent and applicable to the facts in the case and particularly in view of the fact said charge stated that it was necessary for the jury to be satisfied that the confessions or admissions were free and voluntary acts beyond a reasonable doubt, and because it further sets out that confessions are to be treated with distrust and scanned with care. Defendants and each of them excepted at the conclusion of the charge to the Court's action in failing to give said charge.

VI.

The Court erred in failing and refusing to charge the jury defendants' request number three, which is as follows:

"That a defendant cannot be convicted on an uncorroborated confession. By that is meant there must be independent proof outside of the confession to establish the *corpus delicti*, that is the body of the crime. Applying the rule specifically to this case you gentlemen would not be authorized to convict the defendant on an uncorroborated confession unless the Government had first shown that there was a conspiracy and that these defendants had some connection with the conspiracy, outside of the confession or confessions."

Said charge was pertinent and applicable to the facts in the case and the defendants and each of them were prejudiced by the failure of the court to so charge because the defendants were before the jury on alleged confessions which were not corroborated by any other proof in the case and the *corpus delicti* had not otherwise been proven. The defendants duly excepted to the action of the court in refusing to give said charge at the conclusion of the Court's charge.

/s/ E. B. Baker,
J. M. C. Townsend,
W. T. Thrasher,
J. A. Lipscomb,
Robert C. Hunt,
Attorneys for Appellants.

I, J. B. Frazier, Jr., United States District Attorney for the Eastern District of Tennessee, acknowledge service on me of copy of the foregoing notice of appeal, and grounds of appeal. This the 3rd day of February, 1940.

/s/ J. B. Frazier, Jr.

Order.

Entered February 3, 1941.

This day came the United States Attorney and came the defendants each in proper person and by their attorneys and made motion in open court for permission to withdraw their motion for new trial heretofore filed in this case, and, upon due consideration of said motion, it is

Ordered that the defendants be and they are hereby permitted to withdraw their motion for new trial filed in this case on February 1, 1941, to which action of the Court the United States Attorney excepted.

Approved for entry:

/s/ Leslie R. Darr,
Judge.

Supersedeas Recognizance.

Filed February 3, 1941.

Know All Men by These Presents, that we Mitchell Clifton Anderson, Route 1, Box 106, Birmingham, Alabama, as principal, and Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety Company, all of Chattanooga, Tennessee, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars ($5,000), for the payment of which to the said United States of America well and truly to be made, we and each of us, do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of February, A. D. 1941.

Whereas lately, at a session of the United States District Court for the Eastern District of Tennessee, Southern Division, in a suit pending in said Court, at Chattanooga, Tennessee, between the United States of America as complainant and Mitchell Clifton Anderson *et al.* as defendant, a Judgment was rendered against said Mitchell Clifton Anderson, defendant, on the 3rd day of February, 1941, sentencing said Mitchell Clifton Anderson to be imprisoned for a term of Two years in the pen. or reformatory and also to pay a find of Five Thousand Dollars ($5,000), in lieu of costs of prosecution, and the said defendant Mitchell Clifton Anderson having obtained from said Court a Writ of Error and filed a copy thereof in the Clerk's office of said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing it to appear at the United States Circuit Court of Appeals, Sixth Circuit; and whereas the said defendant Mitchell Clifton Anderson desires said writ of error to operate as a supersedeas and stay of execution and to be admitted to bail and to be permitted to be and remain at large on bail pending said proceedings in error to the said United States Circuit Court of Appeals, Sixth Circuit.

Now, the Condition of the Above Obligation Is Such that if the said Mitchell Clifton Anderson shall prosecute his writ of error to effect, and if he fail to make his plea good, shall answer and pay said fine and all damages and costs and shall also personally be and appear here in this Court from day to day during the present term and from term to term of this Court thereafter, pending said proceedings in error, and shall surrender himself to the

United States Marshal of this district and be present to abide the Judgment of this Court or that of the United States Circuit Court of Appeals, Sixth Circuit, and serve his sentence and not depart the jurisdiction of this Court without leave thereof, then this obligation to be void; otherwise to remain in full force and virtue.

(S) Mitchell Clifton Anderson (Seal)

Taken and acknowledged before me at Chattanooga. Tennessee, this 3rd day of February, A. D. 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court.

Approved this ..... day of ....., A. D. 19.....

.....
District Judge.

BOND.

(S) Mitchell Clifton Anderson (Seal).

United States of America, Eastern District of Tennessee, ss:

We, Lee McCulley, Foster Hampton and C. C. Gillespie, all of Chattanooga, Tennessee, the sureties to the within recognizance, being duly sworn, depose and say that after paying all our just debts, we are each worth $20,000 and Tennessee Bonding & Surety Co. of Chattanooga, Tennessee, $10,000 Dollars over and above the exemptions allowed by the laws of the State in which we reside, which exemption we waive.

(S) C. C. Gillespie,
(S) Foster Hampton,
(S) Lee McCulley, Surety,
(S) Tennessee Bond & Surety Co.,
by H. B. Irick,
Agent.

Sworn to and subscribed before me, this 3rd day of February, 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court, Eastern District of Tennessee, Southern Division.

United States of America, Eastern District of Tennessee, Southern Division.

Lee McCulley, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 608 Oliver Street, Chattanooga, Hamilton County, Tennessee, in said District; that he is the owner of real estate located in Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the First Civil District of Hamilton County, Tennessee, said real estate being improved.

(S) Lee McCulley.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

Foster Hampton, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at East Brow Road, Signal Mountain, Hamilton County,

Tennessee; that he is the owner of real estate located in Hamilton County, Tennessee, worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the 3rd civil district of Hamilton County, Tennessee, the property being both improved as to some and unimproved as to other tracts.

(S) Foster Hampton.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court.
By Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

C. C. Gillespie, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at Chattanooga, Highland Park Station, R. No. 1, Tennessee; in said District; that he is the owner of real estate located in the 2nd civil district of Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities in property subject to execution and sale; that his property consists of: 13 2/3 acres of real estate located in the 2nd civil district of Hamilton County, Tennessee.

(S) C. C. Gillespie.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

H. B. Irick, Agent for the Tennessee Bonding & Surety Company, of Chattanooga, Hamilton County, Tennessee, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 1005 Fairview Avenue, Chattanooga, Tennessee; in the District aforesaid; that the Tennessee Bonding & Surety Company is the owner of real estate located in Hamilton County, Tennessee; that it is worth at least the sum of $10,000 over and above all its just debts and liabilities, in property subject to execution and sale, and that its property consists of: Real estate located in Hamilton County, Tennessee.

(S) Tennessee Bond & Surety Co.,
by H. B. Irick,
Agent.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy.

Supersedeas Recognizance.

Filed February 3, 1941.

Know All Men by These Presents, that we Robert Lee Ballew of Isabella, Tennessee, as principal, and Lee McCulley, Foster Hamptom, C. C. Gillespie and Tennessee Bonding & Surety Co., all of Chattanooga, Tennessee, as sureties, are held and firmly bound unto the

United States of America in the full and just sum of Three Thousand Dollars ($3,000), for the payment of which to the said United States of America well and truly to be made, we and each of us, do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of February, A. D. 1941.

Whereas lately, at a session of the United States District Court for the Eastern District of Tennessee, Southern Division, in a suit pending in said Court, at Chattanooga, Tennessee, between the United States of America as complainant and Robert Lee Ballew *et al.*, as defendant, a Judgment was rendered against said Robert Lee Ballew defendant, on the 3rd day of February, 1941, sentencing said Robert Lee Ballew to be imprisoned for a term of Two years in the pen. or reformatory and also to pay a fine of One Thousand Dollars ($1,000), in lieu of costs of prosecution, and the said defendant Robert Lee Ballew having obtained from said Court a Writ of Error and filed a copy thereof in the Clerk's office of said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing it to appear at the United States Circuit Court of Appeals, Sixth Circuit; and whereas the said defendant Robert Lee Ballew desires said writ of error to operate as a supersedeas and stay of execution and to be admitted to bail and to be permitted to be and remain at large on bail pending said proceedings in error to the said United States Circuit Court of Appeals, Sixth Circuit.

Now, the Condition of the Above Obligation Is Such that if the said Robert Lee Ballew shall prosecute his writ of error to effect, and if he fail to make his plea good, shall answer and pay said fine and all damages and costs and shall also personally be and appear here in this Court from day to day during the present term and from term to term of this Court thereafter, pending said proceedings in error, and shall surrender himself to the United States Marshal of this district and be present to abide the Judgment of this Court or that of the United States Circuit Court of Appeals, Sixth Circuit, and serve his sentence and not depart the jurisdiction of this Court without leave thereof, then this obligation to be void; otherwise to remain in full force and virtue.

(S) Robert Lee Ballew (Seal)

Taken and acknowledged before me at Chattanooga, Tennessee, this 3rd day of February, A. D. 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court.

Approved this ..... day of ....., A. D. 19.....

.....,
District Judge.

BOND.

Robert Lee Ballew (Seal).

United States of America, Eastern District of Tennessee, ss:

We, Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety Co., the sureties to the within recognizance, being duly sworn, depose and say

that after paying all our just debts, we are each worth as to the first three $20,000; last one $10,000 Dollars over and above the exemptions allowed by the laws of the State in which we reside, which exemption we waive.

(S) Lee McCulley, Surety,
(S) C. C. Gillespie,
(S) Foster Hampton,
(S) Tennessee Bond & Surety Co.,
by H. B. Irick,
Agent.

Sworn to and subscribed before me this February 3, 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court, Eastern District of Tennessee.

United States of America, Eastern District of Tennessee, Southern Division:

Lee McCulley, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 608 Oliver Street, Chattanooga, Hamilton County, Tennessee, in said District; that he is the owner of real estate located in Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the First Civil District of Hamilton County, Tennessee, said real estate being improved.

(S) Lee McCulley.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court.
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

Foster Hampton, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at East Brow Road, Sighal Mountain, Hamilton County, Tennessee; that he is the owner of real estate located in Hamilton County, Tennessee, worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the 3rd civil district of Hamilton County, Tennessee, the property being both improved as to some and unimproved as to other tracts.

(S) Foster Hampton

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

C. C. Gilespie, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at Chattanooga, Highland Park Station, R. No. 1 .Tennessee; in said District; that he is the owner of real estate located in the 2nd civil district of Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities in property

subject to execution and sale; that his property consists of:

13 2/3 acres of real estate located in the 2nd civil district of Hamilton County, Tennessee.

(S) C. C. Gillespie.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

H. B. Irick, Agent for the Tennessee Bonding & Surety Company of Chattanooga, Hamilton County, Tennessee, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 1005 Fairview Avenue, Chattanooga, Tennessee; in the District aforesaid; that the Tennessee Bonding & Surety Company is the owner of real estate located in Hamilton County, Tennessee; that it is worth at least the sum of $10,000 over and above all its just debts and liabilities, in property subject to execution and sale, and that his property consists of:

Real estate located in Hamilton County, Tennessee.

(S) Tennessee Bond & Surety Co.,
by H. B. Irick,
Agent.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By Effie McCullough,
Deputy Clerk.

Supersedeas Recognizance.

Filed February 3, 1941.

Know All Men by These Presents, that we Earl Hubbard, Isabella, Tennessee, as principal, and Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety Company, all of Chattanooga, Tennessee, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Three Thousand Dollars ($3,000), for the payment of which to the said United States of America well and truly to be made, we and each of us, do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of February, A. D. 1941.

Whereas lately, at a session of the United States District Court for the Eastern District of Tennessee, Southern Division, in a suit pending in said Court, at Chattanooga, Tennessee, between the United States of America as complainant and Earl Hubbard *et al.*, as defendant, a Judgment was rendered against said Earl Hubbard, defendant, on the 3rd day of February, 1941, sentencing

said Earl Hubbard to be imprisoned for a term of Two years in the pen. or reformatory and also to pay a fine of $1,000 Dollars ($1,000), in lieu of costs of prosecution, and the said defendant Earl Hubbard having obtained from said Court a Writ of Error and filed a copy thereof in the Clerk's office of said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing it to appear at the United States Circuit Court of Appeals for the Sixth Circuit; and whereas the said defendant Earl Hubbard desires said writ of error to operate as a supersedeas and stay of execution and to be admitted to bail and to be permitted to be and remain at large on bail pending said proceedings in error to the said United States Circuit Court of Appeals, Sixth Circuit.

Now, the Condition of the Above Obligation Is Such that if the said Earl Hubbard shall prosecute his writ of error to effect, and if he fail to make his plea good, shall answer and pay said fine and all damages and costs and shall also personally be and appear here in this Court from day to day during the present term and from term to term of this Court thereafter, pending said proceedings in error, and shall surrender himself to the United States Marshal of this district and be present to abide the Judgment of this Court or that of the United States Circuit Court of Appeals, Sixth Circuit, and serve his sentence and not depart the jurisdiction of this Court without leave thereof, then this obligation to be void; otherwise to remain in full force and virtue.

(S) Earl Hubbard (Seal)

Taken and acknowledged before me at Chattanooga, Tennessee, this 3rd day of February, A. D. 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court.

Approved this ..... day of ....., A. D. 19....

.....,
District Judge.

BOND.

(S) Earl Hubbard (Seal).

United States of America, Eastern District of Tennessee, ss:

We, Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety Company, all of Chattanooga, Tennessee, the sureties to the within recognizance, being duly sworn, depose and say that after paying all our just debts, we are each worth as to the first three $20,000; last one $10,000 Dollars over and above the exemptions allowed by the laws of the State in which we reside, which exemption we waive.

(S) Lee McCulley, Surety
(S) C. C. Gillespie
(S) Foster Hampton
(S) Tennessee Bond & Surety Co.
by H. B. Irick,
Agent.

Sworn and subscribed to before me this 3rd day of February, 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court, Eastern District of Tennessee.

United States of America, Eastern District of Tennessee, Southern Division.

Lee McCulley, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 608 Oliver Street, Chattanooga, Hamilton County, Tennessee, in said District; that he is the owner of real estate located in Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the First Civil District of Hamilton County, Tennessee, said real estate being improved.

(S) Lee McCulley.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court.

By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

Foster Hampton, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at East Brow Road, Signal Mountain, Hamilton County, Tennessee; that he is the owner of real estate located in Hamilton County, Tennessee, worth at least the sum of $20,000 over and above all his just debts and liabilities in property subject to execution and sale, that his property consists of real estate located in Third Civil District of

Hamilton County, Tennessee, some of which is improved and some is unimproved.

(S) Foster Hampton.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court.
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

C. C. Gillespie, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at Chattanooga, Highland Park Station, R. No. 1, Tennessee; in said District; that he is the owner of real estate located in the 2nd civil district of Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities in property subject to execution and sale; that his property consists of:

13 2/3 acres of real estate located in the 2nd civil district of Hamilton County, Tennessee.

(S) C. C. Gillespie.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court.
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

H. B. Irick, Agent for the Tennessee Bonding & Surety Company, of Chattanooga, Hamilton County, Tennessee, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 1005 Fairview Avenue, Chattanooga, Tennessee; in the District aforesaid; that the Tennessee Bonding & Surety Company is the owner of real estate located in Hamilton County, Tennessee; that it is worth at least the sum of $10,000 over and above all its just debts and liabilities, in property subject to execution and sale, and that is property consists of:

Real estate located in Hamilton County, Tennessee.

(S) Tennessee Bond & Surety Co.
by H. B. Irick,
Agent.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court.
By Effie McCullough,
Deputy Clerk.

Supersedeas Recognizance.

Filed February 3, 1941.

Know All Men By These Presents, that we John David Queen, Copperhill, Tennessee, as principal, and Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety Company, all of Chattanooga, Tennessee, as sureties, are held and firmly bound unto the United

States of America in the full and just sum of Three Thousand Dollars ($3,000), for the payment of which to the said United States of America well and truly to be made, we and each of us, do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of February, A. D. 1941.

Whereas lately, at a session of the United States District Court for the Eastern District of Tennessee, Southern Division, in a suit pending in said Court, at Chattanooga, Tennessee, between the United States of America as complainant and John David Queen *et al.*, as defendant, a Judgment was rendered against said John David Queen defendant, on the 3rd day of February, 1941, sentencing said John David Queen to be imprisoned for a term of Two years in the penitentiary or reformatory and also to pay a fine of One Thousand Dollars ($1,000), in lieu of costs of prosecution, and the said defendant John David Queen having obtained from said Court a Writ of Error and filed a copy thereof in the Clerk's office of said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing it to appear at the United States Circuit Court of Appeals, Sixth Circuit; and whereas the said defendant John David Queen desires said writ of error to operate as a supersedeas and stay of execution and to be admitted to bail and to be permitted to be and remain at large on bail pending said proceedings in error to the said United States Circuit Court of Appeals, Sixth Circuit.

Now, the Condition of the Above Obligation Is Such that if the said John David Queen shall prosecute his writ of error to effect, and if he fail to make his plea good, shall answer and pay said fine and all damages and costs and shall also personally be and appear here in this Court from day to day during the present term and from term to term of this Court thereafter, pending said proceedings in error, and shall surrender himself to the United States Marshal of this district and be present to abide the Judgment of this Court or that of the United States Circuit Court of Appeals, Sixth Circuit, and serve his sentence and not depart the jurisdiction of this Court without leave thereof, then this obligation to be void; otherwise to remain in full force and virtue.

(S) John David Queen,
Principal. (Seal)

Taken and acknowledged before me at Chattanooga, Tennessee, this 3rd day of February, A. D. 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court.

Approved this ....day of ....., A. D. 19 .

.....,
District Judge.

BOND.

(S) John David Queen (Seal).

United States of America, Eastern District of Tennessee, ss.

We, Lee McCulley, Foster Hampton and C. C. Gillespie, the sureties to the within recognizance, being duly

sworn, depose and say that after paying all our just debts, we are each worth $20,000 and Tennessee Bonding & Surety Co. $10,000 Dollars over and above the exemptions allowed by the laws of the State in which we reside, which exemption we waive.

(S) Lee McCulley, Surety.
(S) C. C. Gilespie,
(S) Foster Hampton,
(S) Tennessee Bond & Surety Co.,
by H. B. Irick.

Subscribed and sworn to before me, this February 3, 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court, Eastern District of Tennessee, Southern Division.

United States of America, Eastern District of Tennessee, Southern Division.

Lee McCulley, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 608 Oliver Street, Chattanooga, Hamilton County, Tennessee, in said District; that he is the owner of real estate located in Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the First Civil District of Hamilton County, Tennessee, said real estate being improved.

(S) Lee McCulley.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

Foster Hampton, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at East Brow Road, Signal Mountain, Hamilton County; Tennessee; that he is the owner of real estate located in Hamilton County, Tennessee, worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the 3rd civil district of Hamilton County, Tennessee, the property being both improved as to some and unimproved as to other tracts.

(S) Foster Hampton.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

C. C. Gillespie, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at

Chattanooga, Highland Park Station, R. No. 1, Tennessee; in said District; that he is the owner of real estate located in the 2nd civil district of Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities in property subject to execution and sale; that his property consists of:

13 2/3 acres of real estate located in the 2nd civil district of Hamilton County, Tennessee.

(S) C. C. Gillespie.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

H. B. Irick, Agent for the Tennessee Bonding & Surety Company, of Chattanooga, Hamilton County, Tennessee, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 1005 Fairview Avenue, Chattanooga, Tennessee; in the District aforesaid; that the Tennessee Bonding & Surety Company is the owner of real estate located in Hamilton County, Tennessee; that it is worth at least the sum of $10,000 over and above all its just debts and liabilities, in property subject to execution and sale, and that its property consists of:

Real estate located in Hamilton County, Tennessee.

(S) Tennessee Bond & Surety Co.
by H. B. Irick,
Agent.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

Supersedeas Recognizance.

Filed February 3, 1941.

Know All Men by These Presents, that we Robert Lee Rhodes, Copperhill, Tennessee, as principal, and Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety company, all of Chattanooga, Tennessee, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Three Thousand Dollars ($3,000), for the payment of which to the said United States of America well and truly to be made, we and each of us do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of February, A. D. 1941.

Whereas lately, at a session of the United States District Court for the Eastern District of Tennessee, Southern Division, in a suit pending in said Court, at Chattanooga between the United States of America as complainant and Robert Lee Rhodes *et al.*, as defendant, a Judgment was rendered against said Robert Lee Rhodes defendant, on the 3rd day of February, 1941, sentencing

said Robert Lee Rhodes to be imprisoned for a term of Two years in the pen. or reformatory and also to pay a fine of One Thousand Dollars ($1,000), and costs of prosecution, and the said defendant Robert Lee Rhodes having obtained from said Court a Writ of Error and filed a copy thereof in the Clerk's office of said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing it to appear at the United States Circuit Court of Appeals, Sixth Circuit; and whereas the said defendant Robert Lee Rhodes desires said writ of error to operate as a supersedeas and stay of execution and to be admitted to bail and to be permitted to be and remain at large on bail pending said proceedings in error to the said United States Circuit Court of Appeals, Sixth Circuit.

Now, the Condition of the Above Obligation Is Such that if the said Robert Lee Rhodes shall prosecute his writ of error to effect, and if he fail to make his plea good, shall answer and pay said fine and all damages and costs and shall also personally be and appear here in this Court from day to day during the present term and from term to term of this Court thereafter, pending said proceedings in error, and shall surrender himself to the United States Marshal of this district and be present to abide the Judgment of this Court or that of the United States Circuit Court of Appeals, Sixth Circuit, and serve his sentence and not depart the jurisdiction of this Court without leave thereof, then this obligation to be void; otherwise to remain in full force and virtue.

(S) Robert Lee Rhodes (seal)

Taken and acknowledged before me at Chattanooga, Tennessee, this 3rd day of February, A. D. 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court.

Approved this ____ day of _____, A. D. 19 ..

_____,
District Judge.

BOND.

(S) Robert Lee Rhodes (Seal).

United States of America, Eastern District of Tennessee, ss:

We, Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety Co., all of Chattanooga, Tennessee, the sureties to the within recognizance, being duly sworn, depose and say that after paying all our just debts, we are each worth as to first three $20,000, last one $10,000 Dollars over and above the exemptions allowed by the laws of the State in which we reside, which exemption we waive.

Lee McCulley, Surety,
C. C. Gillespie,
Foster Hampton,
(S) Tennessee Bond & Surety Company,
by H. B. Irick,
Agent.

Sworn and subscribed to before me this February 3, 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court, Eastern District, Tennessee.

United States of America, Eastern District of Tennessee, Southern Division.

Lee McCulley, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 608 Oliver Street, Chattanooga, Hamilton County, Tennessee, in said District; that he is the owner of real estate located in Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all of his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the First Civil District of Hamilton County, Tennessee, said real estate being improved.

(S) Lee McCulley.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court.
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

Foster Hampton, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at East Brow Road, Signal Mountain, Hamilton County, Tennessee; that he is the owner of real estate located in Hamilton County, Tennessee, worth at least the sum of $20,000 over and above all his just debts and liabilities in property subject to execution and sale, that his property consists of real estate located in the Third

Civil District of Hamilton County, Tennessee, some of which is improved and some is unimproved.

(S) Foster Hampton.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

C. C. Gillespie, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at Chattanooga, Highland Park Station, R. No. 1, Tennessee; in said District; that he is the owner of real estate located in the 2nd civil district of Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities in property subject to execution and sale; that his property consists of:

13 2/3 acres of real estate located in the 2nd civil district of Hamilton County, Tennessee.

(S) C. C. Gillespie.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

H. B. Irick, Agent for the Tennessee Bonding & Surety Company, of Chattanooga, Hamilton County, Tennessee, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 1005 Fairview Avenue, Chattanooga, Tennessee; in the District aforesaid; that the Tennessee Bonding & Surety Company is the owner of real estate located in Hamilton County, Tennessee; that it is worth at least the sum of $10,000 over and above all its just debts and liabilities, in property subject to execution and sale, and that its property consists of:

Real estate located in Hamilton County, Tennessee.

(S) Tennessee Bond & Surety Co.,
By H. B. Irick,
Agent.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy.

Supersedeas Recognizance.

Filed February 3, 1941.

Know All Men by These Presents, that we John Edward Simonds, 38 Maple Avenue, Rockaway, N. J., as principal, and Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety Company, all of

Chattanooga, Tennessee, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Three Thousand Dollars ($3,000), for the payment of which to the said United States of America well and truly to be made, we and each of us, do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of February, A. D. 1941.

Whereas lately, at a session of the United States District Court for the Eastern District of Tennessee, Southern Division, in a suit pending in said Court, at Chattanooga between the United States of America as complainant and John Edward Simonds *et al.*, as defendant, a Judgment was rendered against said John Edward Simonds defendant, on the 3rd day of February, 1941, sentencing said John Edward Simonds to be imprisoned for a term of Two years in the pen. or reformatory and also to pay a fine of One Thousand Dollars ($1,000), in lieu of costs of prosecution, and the said defendant John Edward Simonds having obtained from said Court a Writ of Error and filed a copy thereof in the Clerk's office of said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing it to appear at the United States Circuit Court of Appeals, Sixth Circuit; and whereas the said defendant John Edward Simonds desires said writ of error to operate as a supersedeas and stay of execution and to be admitted to bail and to be permitted to be and remain at large on bail pending said proceedings in error

to the said United States Circuit Court of Appeals, Sixth Circuit.

Now, the Condition of the Above Obligation Is Such that if the said John Edward Simonds shall prosecute his writ of error to effect, and if he fail to make his plea good, shall answer and pay said fine and all damages and costs and shall also personally be and appear here in this Court from day to day during the present term and from term to term of this Court thereafter, pending said proceedings in error, and shall surrender himself to the United States Marshal of this district and be present to abide the Judgment of this Court or that of the United States Circuit Court of Appeals, Sixth Circuit, and serve his sentence and not depart the jurisdiction of this Court without leave thereof, then this obligation to be void; otherwise to remain in full force and virtue.

John Edward Simonds (Seal).

Taken and acknowledged before me at Chattanooga, Tennessee, this 3rd day of February, A. D. 1941.

Effie McCullough,
Deputy Clerk, United States District Court.

Approved this ... day of ....., A. D. 19..

.....,
District Judge.

BOND.

John Edward Simonds (Seal).

United States of America, Eastern District of Tennessee, ss:

We, Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety Co., all of Chattanooga,

Tennessee, the sureties to the within recognizance, being duly sworn, depose and say that after paying all our just debts, we are each worth as to the first three $20,000 last one $10,000 Dollars over and above the exemptions allowed by the laws of the State in which we reside, which exemption we waive.

Lee McCulley, Surety
C. C. Gillespie,
Foster Hampton,
Tennessee Bond & Surety Co.,
by H. B. Irick,
Agent.

Sworn and subscribed to before me, this February 3, 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court, Eastern District of Tennessee.

United States of America, Eastern District of Tennessee, Southern Division.

Lee McCulley, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 608 Oliver Street, Chattanooga, Hamilton County, Tennessee, in said District; that he is the owner of real estate located in Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the First Civil District of Hamilton County, Tennessee, said real estate being improved.

(S) Lee McCulley.

Sworn to and subscribed before me, this February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court.
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

Foster Hampton, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at East Brow Road, Signal Mountain, Hamilton County, Tennessee; that he is the owner of real estate located in Hamilton County, Tennessee, worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the 3rd civil district of Hamilton County, Tennessee, the property being both improved as to some and unimproved as to other tracts.

(S) Foster Hampton.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court.
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

C. C. Gillespie, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides

at Chattanooga, Highland Park Station, R. No. 1, Tennessee; in said District; that he is the owner of real estate located in the 2nd civil district of Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities in property subject to execution and sale; that his property consists of:

13 2/3 acres of real estate located in the 2nd civil district of Hamilton County, Tennessee.

(S) C. C. Gillespie.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court.
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

H. B. Irick, Agent for the Tennessee Bonding & Surety Company, of Chattanooga, Hamilton County, Tennessee, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 1005 Fairview Ave., Chattanooga, Tennessee; in the District aforesaid; that the Tennessee Bonding & Surety Company is the owner of real estate located in Hamilton County, Tennessee; that it is worth at least the sum of $10,000 over and

above all its just debts and liabilities, in property subject to execution and sale, and that his property consists of:

Real estate located in Hamilton County, Tennessee.

(S) Tennessee Bond & Surety Co.
by H. B. Irick,
Agent.

Sworn to and subscribed before me, this 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

Supersedeas Recognizance.

Filed February 3, 1941.

Know All Men by These Presents, that we Felton Moore Woodward, Copperhill, Tennessee, as principal, and Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety Company, all of Chattanooga, Tennessee, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Three Thousand Dollars ($3,000), for the payment of which to the said United States of America well and truly to be made, we and each of us, do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of February, A. D. 1941.

Whereas lately, at a session of the United States District Court for the Eastern District of Tennessee, South-

ern Division, in a suit pending in said Court, at Chattanooga between the United States of America as complainant and Felton Moore Woodward as defendant, a Judgment was rendered against said Felton Moore Woodward defendant, on the 3rd day of February, 1941, sentencing said Felton Moore Woodward to be imprisoned for a term of Two Years in the pen. or reformatory and also to pay a fine of One Thousand Dollars ($1,000), in lieu of costs of prosecution, and the said defendant Felton Moore Woodward having obtained from said Court a Writ of Error and filed a copy thereof in the Clerk's office of said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing it to appear at the United States Circuit Court of Appeals, Sixth Circuit; and whereas the said defendant Felton Moore Woodward desires said writ of error to operate as a supersedeas and stay of execution and to be admitted to bail and to be permitted to be and remain at large on bail pending said proceedings in error to the said United States Circuit Court of Appeals, Sixth Circuit.

Now, the Condition of the Above Obligation Is Such that if the said Felton Moore Woodward shall prosecute his writ of error to effect, and if he fail to make his plea good, shall answer and pay said fine and all damages and costs and shall also personally be and appear here in this Court from day to day during the present term and from term to term of this Court thereafter, pending said proceedings in error, and shall surrender himself to the United States Marshal of this district and be present to abide the Judgment of this Court or that of the United

States Circuit Court of Appeals, Sixth Circuit, and serve his sentence and not depart the jurisdiction of this Court without leave thereof, then this obligation to be void; otherwise to remain in full force and virtue.

/s/ Felton Moore Woodward (Seal)

Taken and acknowledged before me at Chattanooga, Tennessee, this 3rd day of February, A. D. 1941.

/s/ Effie McCullough,
Clerk, United States District Court.

Approved this ..... day of ....., A. D. 19.....

.....
District Judge.

BOND.

/s/ Felton Moore Woodward (Seal).

United States of America, Eastern District of Tennessee, ss:

We, Lee McCulley, Foster Hampton, C. C. Gillespie, & Tennessee Bonding & Surety Company, all of Chattanooga, Tennessee, the sureties to the within recognizance, being duly shown, depose and say that after paying all our just debts, we are each worth as to first three $20,000; as to the last one $10,000 Dollars over and above the exemptions allowed by the laws of the State in which we reside, which exemption we waive.

/s/ Lee McCulley
C. C. Gillespie,
Foster Hampton.

Sworn and subscribed to before me this ..... day of....., 194.....

Tennessee Bonding & Surety Co.,
By H. B. Irick.

Sworn and subscribed to before me this February 3, 1941.

/s/ Effie McCullough,
Deputy Clerk, United States District Court, Eastern District, Tennessee.

United States of America, Eastern District of Tennessee, Southern Division.

Lee McCulley, a surety on the annexed recognizance, being duly sworn deposes and says that he resides at 608 Oliver Street, Chattanooga, Hamilton County, Tennessee, in said District; that he is the owner of real estate located in Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the First Civil District of Hamilton County, Tennessee, said real estate being improved.

Lee McCulley.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court.
By /s/ Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

Foster Hampton, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at East Brow Road, Signal Mountain, Hamilton County,

Tennessee; that he is the owner of real estate located in Hamilton County, Tennessee, worth at least the sum of $20,000 over and above all his just debts and liabilities in property subject to execution and sale, that his property consists of real estate located in the Third Civil District of Hamilton County, Tennessee, some of which is improved and some is unimproved.

/s/ Foster Hampton.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By /s/ Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

C. C. Gillespie, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at Chattanooga, Highland Park Station, R. No. 1, Tennessee; in said District; that he is the owner of real estate located in the 2nd civil district of Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities in property subject to execution and sale; that his property consists of:

13 2/3 acres of real estate located in the 2nd civil district of Hamilton County, Tennessee.

(S) C. C. Gillespie.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

H. B. Irick, Agent for the Tennessee Bonding & Surety Company, of Chattanooga, Hamilton County, Tennessee, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 1005 Fairview Avenue, Chattanooga, Tennessee; in the District aforesaid; that the Tennessee Bonding & Surety Company is the owner of real estate located in Hamilton County, Tennessee; that it is worth at least the sum of $10,000 over and above all its just debts and liabilities, in property subject to execution and sale, and that its property consists of:

Real estate located in Hamilton County, Tennessee.

(S) Tennessee Bond & Surety Co.
by H. B. Irick,
Agent.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy.

Supersedeas Recognizance.

Filed February 3, 1941.

Know All Men by These Presents, that we, Marion Luther Ellis, 1404 Linden Avenue, Baltimore, Maryland, as principal, and Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety Company, all of Chattanooga, Tennessee, as sureties, are held and firmly

bound unto the United States of America in the full and just sum of Three Thousand Dollars ($3,000), for the payment of which to the said United States of America well and truly to be made, we and each of us do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of February, A. D. 1941.

Whereas lately, at a session of the United States District Court for the Eastern District of Tennessee, Southern Division, in a suit pending in said Court at Chattanooga between the United States of America as complainant and Marion Luther Ellis *et al.*, as defendant, a Judgment was rendered against said Marion Luther Ellis defendant, on the 3rd day of February, 1941, sentencing said Marion Luther Ellis to be imprisoned for a term of Fifteen Months in the pen. or reformatory and costs of prosecution, and the said defendant Marion Luther Ellis having obtained from said Court a Writ of Error and filed a copy thereof in the Clerk's office of said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing it to appear at the United States Circuit Court of Appeals, Sixth Circuit; and whereas the said defendant Marion Luther Ellis desires said writ of error to operate as a supersedeas and stay of execution and to be admitted to bail and to be permitted to be and remain at large on bail pending said proceedings in error to the said United States Circuit Court of Appeals, Sixth Circuit.

Now, the Condition of the Above Obligation Is Such that if the said Marion Luther Ellis shall prosecute his writ of error to effect, and if he fail to make his plea good, shall answer and pay said fine and all damages and costs and shall also personally be and appear here in this Court from day to day during the present term and from term to term of this Court thereafter, pending said proceedings in error, and shall surrender himself to the United States Marshal of this district and be present to abide the Judgment of this Court or that of the United States Circuit Court of Appeals, Sixth Circuit and serve his sentence and not depart the jurisdiction of this Court without leave thereof, then this obligation to be void; otherwise to remain in full force and virtue.

(S) Marion Luther Ellis (Seal)

Taken and acknowledged before me at Chattanooga, Tennessee, this 3rd day of February, A. D. 1941.

(S) Effie McCullough,
Deputy Clerk, United States District Court.

Approved this 3rd day of February, A. D. 1941.

District Judge.

BOND.

(S) Marion Luther Ellis (Seal).

United States of America, Eastern District of Tennessee, ss:

We, Lee McCulley, Foster Hampton, C. C. Gillespie and Tennessee Bonding & Surety Company, all of Chattanooga, Tennessee, the sureties to the within recog-

nizance, being duly sworn, depose and say that after paying all our just debts, we are each worth First three $20,000, last one $10,000 Dollars over and above the exemptions allowed by the laws of the State in which we reside, which exemption we waive.

(S) Lee McCulley, Surety,
(S) C. C. Gillespie,
(S) Foster Hampton,
(S) Tennessee Bond & Surety Co., by H. B. Irick, Agent.

Sworn and subscribed to before me this February 3, 1941.

(S) Effie McCullough, Deputy Clerk, United States District Court, Eastern District of Tennessee, Southern Division.

United States of America, Eastern District of Tennessee, Southern Division.

Lee McCulley, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 608 Oliver Street, Chattanooga, Hamilton County, Tennessee, in said District; that he is the owner of real estate located in Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the First Civil District of Hamilton County, Tennessee, said real estate being improved.

(S) Lee McCulley.

Sworn to and subscribed before me, This February, 3, 1941.

Lee A. Beeler,
Clerk, United States District Court;
By Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

Foster Hampton, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at East Brow Road, Signal Mountain, Hamilton County, Tennessee; that he is the owner of real estate located in Hamilton County, Tennessee, worth at least the sum of $20,000 over and above all his just debts and liabilities, in property subject to execution and sale, that his property consists of real estate located in the 3rd civil district of Hamilton County, Tennessee, the property being both improved as to some and unimproved as to other tracts.

(S) Foster Hampton.

Sworn to and subscribed before me, This February 3, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

C. C. Gillespie, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at

Chattanooga, Highland Park Station, R. No. 1, Tennessee; in said District; that he is the owner of real estate located in the 2nd civil district of Hamilton County, Tennessee; that he is worth at least the sum of $20,000 over and above all his just debts and liabilities in property subject to execution and sale; that his property consists of:

13 2/3 acres of real estate located in the 2nd civil district of Hamilton County, Tennessee.

(S) C. C. Gillespie.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

United States of America, Eastern District of Tennessee, Southern Division.

H. B. Irick, Agent for the Tennessee Bonding & Surety Company of Chattanooga, Hamilton County, Tennessee, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at 1005 Fairview Avenue, Chattanooga, Tennessee; in the District aforesaid; that the Tennessee Bonding & Surety Company is the owner of real estate located in Hamilton County, Tennessee; that it is worth at least the sum of $10,000 over and above all its just debts and liabilities, in property subject to execution and sale, and that its property consists of:

Real estate located in Hamilton County, Tennessee.

(S) Tennessee Bonding & Surety Co.,
by H. B. Irick,
Agent.

Sworn to and subscribed before me, This 3rd day of February, 1941.

Lee A. Beeler,
Clerk, United States District Court,
By (S) Effie McCullough,
Deputy Clerk.

Order Extending Time for Filing Bill of Exceptions.

Entered February 26, 1941.

In the above cause it appears to the court that the record is very voluminous and that it will not be possible for the appellants to complete their Bill of Exceptions within the 30 days period fixed by the rules of criminal appeal. It is therefore ordered by the court that the time for filing said Bill of Exceptions and Assignments of Error be enlarged and the appellants are allowed until the 1st day of April, 1941, to file their Bill of Exceptions and Assignments of Error, and such other papers as may be necessary to the appeal.

Approved for entry:

/s/ Leslie R. Darr,
United States District Judge.

Assignment of Errors.

Filed March 25, 1941.

Now come the appellants by their attorneys and say that in the proceedings herein and in the orders and judgments entered there are manifest errors, to-wit:

Assignment of Error No. 1.

The Court erred in refusing to direct the jury to return a verdict of not guilty for each and every appellant at the conclusion of the Government's proof and at the conclusion of all the proof in the case.

(1) The Court erred in failing and refusing to direct the jury to return a verdict of not guilty at the conclusion of the Government's proof and at the conclusion of all the proof in the case as to the appellant, Mitchell Clifton Anderson, because there was no evidence upon which a conviction might have been had and no competent evidence before the Court and jury to show the *corpus delicti* of the crime alleged, that is, a conspiracy and no proof that if a conspiracy was shown, that said appellant had any connection with the same.

(2) The Court erred in refusing to direct the jury to return a verdict of not guilty as to the appellants, John Edward Simonds, Felton Moore Woodward and Earl Hubbard, for the reason that there was no competent proof on which the case could have been submitted to the jury, no proof of a conspiracy or of the *corpus delicti*, and the jury would not have been and was not authorized to return a verdict of guilty on uncorroborated confessions or admissions.

(3) The Court erred in failing and refusing to direct the jury to return a verdict of not guilty at the conclusion of the Government's proof and at the conclusion of all the proof in the case as to the appellants, Robert Lee Rhodes, Robert Lee Ballew and John David Queen, because there was no competent proof to show

that said appellants or either of them had any connection with the conspiracy or that they or either of them at any time combined or confederated or were at any time engaged in a conspiracy. The jury would not have been and was not, authorized to return a verdict of guilty as to said appellants, or either of them, on an uncorroborated confession without first having independent proof of the *corpus delicti*, that is that there was a conspiracy and that these appellants had some connection therewith.

(4) The Court erred in failing and refusing to direct the jury to return a verdict of not guilty at the conclusion of the Government's proof and at the conclusion of all the proof in the case as to the appellant, Marion Luther Ellis. There was no competent evidence before the Court and jury to show that said appellant had any connection with a conspiracy, and such circumstances as were adduced in proof by the Government were equally as consistent with the innocence of said appellant as with his guilt.

Assignment of Error No. 2.

The Court erred in admitting to the consideration of the jury certain alleged statements made by the appellants, John Edward Simonds, Felton Moore Woodward and Earl Hubbard.

(1) All the proof adduced in the case showed that the alleged statement made by John Edward Simonds was made under duress and threats, and his signature secured by intimidation and by threats, hope and promise of re-

ward, and while said appellant was held in custody in a private jail by alleged deputy sheriffs of Polk County, Tennessee, and by agents of the Federal Bureau of Investigation, for several days and without any charge against him and that he was there subjected to repeated indignities and threats, and lengthy questioning at unreasonable hours, and was deprived of food and a place to sleep and under the influence of narcotics. The Court further erred in refusing to exclude said statement from the consideration of the jury at the conclusion of the Government's proof and again at the conclusion of all the proof in the case. The said statement was obtained in violation of appellant's rights under the 5th amendment to the Constitution of the United States in that the appellant was deprived and denied due process of law and equal protection of the laws, and compelled to be a witness against himself.

(2) All the proof in the case showed that the statement alleged to have been made by Felton Moore Woodward was made under duress and threats and his signature secured by intimidation, by threats, hope and promise of reward, and while said appellant was held in custody in a private jail by deputy sheriffs of Polk County, Tennessee, and agents of the Federal Bureau of Investigation, for a number of days without any charge against him, and while he was subjected to repeated and continuous intimidation and cross-examination, deprived of food and a place to sleep and after he had been placed under the influence of narcotics. The Court further erred in refusing to exclude said statement from the considera-

tion of the jury at the close of the Government's proof and again at the close of all the proof in the case. The said statement was obtained in violation of appellant's rights under the 5th amendment to the Constitution of the United States in that the appellant was deprived and denied due process of law and equal protection of the laws, and compelled to be a witness against himself.

(3) All the proof adduced in the case showed that the alleged statement made by Earl Hubbard was made under duress and threats and his signature secured by intimidation and by threats, hope and promise of reward, and while said appellant was held in custody in a private jail by alleged deputy sheriffs of Polk County, Tennessee, and by agents of the Federal Bureau of Investigation, for several days and without any charge against him, and that he was there subjected to repeated indignities and threats, and lengthy questioning at unreasonable hours. The Court further erred in refusing to exclude said statement from the consideration of the jury at the conclusion of the Government's proof and again at the conclusion of all the proof in the case. The said statement was obtained in violation of appellant's rights under the 5th amendment to the Constitution of the United States, in that the appellant was deprived and denied due process of law, and equal protection of the law, and compelled to be a witness against himself.

Assignment of Error No. 3.

The Court erred in admitting for the consideration of the jury certain statements alleged to have been made

by John David Queen, Robert Lee Rhodes and Robert Lee Ballew. Said statements were obtained by duress, compulsion and hope or promise of reward and each of said statements should have been excluded from the consideration of the jury and said statements were made when said appellants were in custody in a private jail, and the court further erred in failing and refusing to exclude said statements from the consideration of the jury at the conclusion of the Government's proof and at the conclusion of all the proof in the case, on proper motion made by said appellants.

(1) The said statements were obtained in violation of said appellants' rights under the 5th amendment to the Constitution of the United States, in that the appellants were deprived and denied due process of law, and equal protection of the law, and compelled to give evidence against themselves.

Assignment of Error No. 4:

The Court erred in sustaining exception to the following questions asked the Government's witness, B. E. Biggs, as follows:

"Now, Sheriff, for some period prior to these explosions and all during the time of these explosions I will ask you if you didn't have a standing order on file that all your deputies were to search all these defendants' cars that were found out at night?

Mr. Frazier: We object to that.

Court: Exception sustained.

Mr. Baker: That is asked for this purpose, there is a great deal of testimony some of the defendants were transporting powder back and forth through

Polk County. I want to show by this witness those were stopped.

Court: Sustain the exception.

Mr. Baker: Except to Your Honor's ruling."

The Court erred in sustaining exception to the following question asked the Government's witness, B. E. Biggs, Sheriff of Polk County, as follows:

"I will ask you this question, Sheriff, if the Copper Company wasn't as a matter of fact paying those deputies you had there?

Mr. Frazier: I object to that.

Court: Sustain the exception.

Mr. Baker: We want to except to Your Honor's ruling."

The Court erred in sustaining exception to the following question asked the defendant Marion Luther Ellis:

"Q. Since the Government has asked you about it, how many times had you been searched, before that time?

Mr. Badgett: I didn't ask about that, we object.

By Court: Objection sustained.

Mr. Baker: We except to the Court's ruling.

Q. Had you been searched before that time?

Mr. Badgett: We object to that because immaterial.

By Court: I don't see the materiality of it.

Mr. Baker: I would like to have the jury excused and go into that matter.

By Court: The Court does not think it is competent, even to go into the record. Objection is sustained.

Mr. Baker: We except to the Court's ruling."

The Court erred in sustaining exception to the following question asked the Government witness Pryor Crowe, as follows:

"Q. How many extra deputy sheriffs were put on?" (meaning at and during time of strike.)

Mr. Badgett: I renew my objection. That has gone far enough, it is wholly immaterial, and I did not go into that on direct examination.

Mr. Baker: It shows the motive and purpose back of this whole prosecution. We will make it competent.

Mr. Badgett: I object to that statement.

By Court: I sustain the objection. I cannot see where a deputy sheriff or a guard would have anything to do with dynamiting Government property.

Mr. Baker: We will connect it up later. We except to the Court's ruling."

The Court erred in sustaining exception and excluding the following question asked the Government witness, C. L. Campbell, as follows:

"Q. That was the time you were searching everybody's car in the Basin?

Mr. Badgett: We object to that.

The Court: Sustained.

Mr. Baker: Note an exception."

The Court erred in sustaining exception and excluding the following question asked the Government witness, Creed Brock, as follows:

"Q. You were employed there and in charge of a detail of deputy sheriff who were guarding the Copper Company?

A. I was a deputy sheriff up there.

Mr. Frazier: We object to that, that is not material whether he was employed by the Copper Company or not.

By the Court: I don't think so, objection sustained.

Mr. Baker: We note an exception to Your Honor's ruling."

The Court erred in sustaining exception and excluding the following question asked the Government witness, B. E. Biggs, as follows:

"Q. And the first thing you did was to put on about a hundred and fifty or two hundred special deputies was it not?

A. I put on a number of special deputies.

Q. Can you give me the highest number you had there?

Mr. Frazier: Now if Your Honor please, I object to that.

The Court: Sustain the objection. I don't see where that is competent here, except it might reflect on the creditability of these confessions, but I don't think we should have too much detail.

Mr. Baker: The Court please, we think it shows the entire situation, and think we ought to be allowed to go into it.

The Court: I don't think so. The investigation was regarding conspiracy to destroy Government property."

The foregoing evidence was all competent and material and vital to the issues involved. It was the theory of the defendants that the Copper Company was in league with and was paying B. E. Biggs, Sheriff of Polk County, to break the strike. That in order to break the strike several hundred men had been employed as Special Dep-

uty Sheriffs, and paid by the Copper Company; that these deputy sheriffs or guards patrolled the highways and searched defendants and all other persons out at night, and searched their homes, all without warrant of law. That when the defendants were arrested they were taken by these same Company Guards or Deputy Sheriffs to a building owned and operated by the Copper Company; that they were arrested without warrants or charges and held in said private jail without charges, and there abused by such guards, and that Federal Bureau of Investigation men came in and aided the Sheriff and the Copper Company; that they were placed in jail, as were many others, and held as they were so that the strike could be broken, and that after days of this sort of treatment some of them finally in utter desperation signed statements which Federal Bureau of Investigation agents and such deputies had previously prepared, on being advised that they would be released if they would sign such statements; that said statements were not true, and that the defendants or any of them had anything to do with destruction of Government property, but that the Copper Company through the Sheriff and the Special deputies or guards blew up the lines in order to get Government agents in and break the strike.

The Court, in the general charge to the jury charged as follows:

> "It is in the proof, evidence of a labor dispute going on at the time of the alleged dynamiting of the towers and men were out on strike. This proof has nothing to do with the case, except in this particular. We are not concerned as to the merits or demerits as to the labor trouble between former employees of

the Copper Company and the Copper Company and these defendants, and that is admitted in proof for two reasons:

First, from the Government's standpoint as showing a motive why the defendants would enter into a conspiracy to dynamite the towers; and,

Second, from the defendants' standpoint of showing a reason for high pressure methods of obtaining confessions and pleas and a reason why others might have dynamited the towers and laid the blame on them."

The Court charged the theory of defendants as follows:

"The defendants say, however, generally that this isn't true.

They say that they were on a strike at that time and that the Copper Company used drastic and high pressure methods by which to win the strike on its side, whereby they had the Sheriff's office with them in the fight and the Sheriff's office through them, had employed a large number of deputies and large number of guards, employed by the Copper Company and paid by the Copper Company and that very high pressure and deceitful methods were used by the Company against these defendants and others in an effort to end the strike. They say the Union was active there but it was a peaceful activity of the Union and these defendants as members thereof were there to see about the distribution of food and medicine and picketing and matters of that kind, all being peaceful and legal activities. The defendants say they never determined the destruction of any property at any time and never entered into any conspiracy to dynamite any of the power lines and that this high pressure, deceitful method was used to obtain confessions and pleas of guilty of some of them and that they finally decided that was the best way out of it, through representations made to them by the Federal Bureau of Investigation Agents and the

Sheriff. Each and all say the Government has not presented sufficient proof to show them guilty of a conspiracy.

They say it is just as reasonable to suppose the Company, through some of its agents had the towers dynamited in order to have the Government send in their agents and lay the blame on the strikers, as it was to think that they did it."

The Court substantially charged the theory of the defendants correctly. However, the theory went to the jury without proof, as hereinabove set out, every effort to prove the theory was meet by objection, and such objections sustained by the Court.

Assignment of Error No. 5.

The Court erred in failing and refusing to give in charge to the jury defendants' request to charge number one, as follows:

"Defendants request the Court to charge the jury as follows:

The Court has allowed certain statements, confessions or admissions by some of the defendants to be admitted to you in evidence. If a confession or admission is made and there is no conflict in the evidence as to the manner of its procurement then the question of its admissibility is a question of law for the Court to pass on. If there is a conflict in the evidence as to whether the confession or admission was voluntarily made then the Court submits it to the jury. The Court instructs you that before you can consider the confessions of the defendants or any of them, you must first find that they were freely and voluntarily made, without fear or compulsion, or hope of reward. In determining this matter you will take into consideration all the facts and circumstances in evidence before you bearing on this subject; that

is the way and manner in which such confession or admission was obtained. It is not necessary that the defendants or any one of them should have been warned that what he said would be used against him. It is sufficient if the confession was voluntarily made, though the defendants or any one of them, as to his particular confession or admission, were not warned or advised that he or they had the right to remain silent. Not to have had the aid of counsel or that the confession was made to an officer while in custody, or drawn out by cross questioning put to the defendant or defendants, or that the defendant was questioned more than once or during the night or for long periods of time would not in themselves render the confessions or admissions involuntary. But if by repeated questioning over long periods of time and during the night, or threats, or promises or hope of reward held out to the defendant or defendants, their will and mind was so impaired and enslaved that the statements introduced by the Government are not their free and voluntary act then you will entirely disregard such confessions or admissions. In passing on this question you will consider the age, experience, education, station in life and physical condition of the defendants; whether the questioning was carried on in any unreasonable manner and at unusual hours; whether or not they or any of them had been given drugs; whether they had sleep or food; whether or not they were kept in a private building or abused or cursed and forced to do other acts against their will.

If you conclude from the proof beyond a reasonable doubt that the confessions or admissions were the free and voluntary act of the defendant or defendants, then you will give them such weight as you think they are entitled to in your consideration of this case. If you conclude that the confessions or admissions were not the free or voluntary confessions or admissions of the defendants or that they were given in consideration of leniency or hope of

reward then you will entirely disregard such confessions and not consider them at all in your deliberations.

In passing on the competency of the confessions in the manner above set out you will consider each confession separately.

I charge you further that confessions of any kind are treated with distrust and should be scanned with care. This is true because at the time a confession is usually made the defendant is in custody and usually surrounded by officers who are seeking to obtain a confession from him."

Said charge was pertinent and applicable to the facts in the case and particularly in view of the fact said charge stated that it was necessary for the jury to be satisfied that the confessions or admissions were free and voluntary acts beyond a reasonable doubt, and because it further sets out that confessions are to be treated with distrust and scanned with care. Defendants and each of them excepted at the conclusion of the charge to the Court's action in failing to give said charge.

Assignment of Error No. 6.

The Court erred in failing and refusing to charge the jury defendants' request number three, which is as follows:

"That a defendant cannot be convicted on an uncorroborated confession. By that is meant there must be independent proof outside of the confession to establish the *corpus delicti*, that is the body of the crime. Applying the rule specifically to this case you gentlemen would not be authorized to convict the defendant on an uncorroborated confession unless the Government had first shown that there was a conspiracy and that these defendants had some connec-

tion with the conspiracy, outside of the confession or confessions."

Said charge was pertinent and applicable to the facts in the case and the defendants and each of them were prejudiced by the failure of the court to so charge because the defendants were before the jury on alleged confessions which were not corroborated by any other proof in the case and the *corpus delicti* had not otherwise been proven. The defendants duly excepted to the action of the court in refusing to give said charge at the conclusion of the Court's charge.

E. B. Baker,
J. M. C. Townsend,
W. T. Thrasher,
J. A. Lipscomb,
Robert C. Hunt,
Attorneys for Appellants.

I, J. B. Frazier, Jr., United States District Attorney for the Eastern District of Tennessee, acknowledge service on me of the foregoing Assignments of Error. This the 25 day of March, 1941.

James B. Frazier, Jr.,
United States Attorney.

Appellants' Designation of Record on Appeal.

Filed March 25, 1941.

Appellants hereby designate the following portions of the record in the above case as the record for use in the United States Circuit Court of Appeals for the Sixth Circuit:

1. The Indictment.

2. The Pleas of the Appellants.

3. The Verdict of the Jury.

4. Motion for a New Trial and Order allowing withdrawal of the same.

5. Final Judgments as to all Appellants.

6. Notice of Appeal.

7. Order, Leslie R. Darr, District Judge, extending time to file Bill of Exceptions until April 1st, 1941.

8. Appeal and Supersedeas Bonds of all Appellants.

9. Order, Leslie R. Darr, District Judge, directing that the original Exhibits when properly identified be used as Exhibits on Appeal.

10. The Bill of Exceptions.

11. Assignments of Error.

12. This Praecipe.

_____,

_____,

_____,

_____,

_____,

Attorneys for Appellants.

I, J. B. Frazier, Jr., United States District Attorney for the Eastern District of Tennessee, acknowledge service on me of the foregoing Praecipe. This_____day of March, 1941.

_____,

U. S. Attorney.

Order As to Exhibits.

Entered March 26, 1941.

In the above cause it is ordered by the Court that the original exhibits filed when properly identified be sent to the United States Circuit Court of Appeals for the 6th Circuit and used as the exhibits on said appeal.

Approved for entry.

Leslie R. Darr,
District Judge.

OK:

E. B. Baker,
Attorney for Appellant.

J. B. Frazier, Jr.
United States District Attorney.

BILL OF EXCEPTIONS.

Filed March 31, 1941, John W. Menzies, Clerk.

Mr. Frazier: We have a stipulation which has been entered into and agreed by attorneys for the defendants and the Government, which I would like to read, as follows:

"In the District Court of the United States for the Eastern District of Tennessee, Southern Division. United States of America vs. Mitchell Clifton Anderson et al. No. 8100.

It is stipulated and agreed by and between counsel for the plaintiff and counsel for the defendants in the above styled cause that:

1st. Two wooden poles on the main Parksville line and two wooden poles on feeder lines were dynamited April 1, 1940.

2nd. That two wooden poles on the Blue Ridge line were dynamited April 1, 1940.

3rd. That one steel structure power tower on the Parksville line was dynamited April 14, 1940.

4th. That one steel structure power tower on the Blue Ridge line was dynamited April 14, 1940.

5th. That one steel structure power tower on the Blue Ridge line was dynamited April 24, 1940.

6th. That one steel structure power tower on the Parksville line was dynamited April 24, 1940.

It is further stipulated that the wooden poles and steel power towers above referred to were the property of the United States of America, in the possession of the Tennessee Valley Authority, a corporation in which the United States of America is a

stockholder, and that the above described poles and towers were of the value of more than Fifty Dollars each.

It is further agreed that this stipulation may be read in and treated as true evidence on the trial of the above styled cause.

_____,
United States Attorney.

_____,

_____,

_____,

_____,

_____,
Counsel for Defendants.

It is signed by all Counsel and I want to file this stipulation.

By Court: All right.

The witness, W. E. SPEER, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is W. E. Speer. I am local manager in the Copper Basin for the Tennessee Valley Authority. The Copper Basin is that territory in Fannin County, Georgia, and Polk County, Tennessee. I have been so occupied about twenty months and was so occupied on or about April 1, 1940. I was there when certain power poles and power lines of the Tennessee Valley Authority were dynamited and I have a log of it with me. A log is our daily record of operations at sub-stations and switch-

ing stations, power houses and load dispatch. This one I have is the one taken at the sub-station, and shows what is known as interruptions on the line and I can tell you from the log when the interruptions happened. The log is kept under my supervision as Manager, and is made out directly under my supervision, as a matter of daily routine.

Referring to the record, the first outage was at 12:04 A. M. of April 1, 1940, just after midnight. This was on the Ocoee line in Polk County. The next one was at 1:27 A. M. April 1st, on the Blue Ridge line in Fannin County, Georgia. That is the line between Polk County, Tennessee, and Fannin County, Georgia; the line runs right through the town of Copperhill, separates the town of Copperhill on one side and McCaysville, Georgia, on the other side, in Georgia.

When I say "outage" I mean interruption of the current on the lines at the time mentioned. I have a record of the poles it went out on. The first outage at 12:04 was structure No. 72 on the Ocoee line and at the same point there was a structure No. 12 that fed another line to the McPherson sub-station, another line paralleling the feeder; both of those poles were in Polk County, Tennessee. On the Blue Ridge end at 1:27 A. M. structure No. 52 on the Blue Ridge line was out. Structure means a two-pole structure, where it was wood. Some of the structures are steel and some are wood. Where the structures are wood there are two poles in each place. The next outage happened at 8:54 P. M. on April 14, 1940. That was on the Ocoee line in Polk County, Tennessee, and that line, while I sometimes call it the Ocoee line,

is sometimes referred to as the Parksville line. This was structure No. 35, a steel structure in Polk County, Tennessee. Another tower was found immediately after that in Fannin County, Georgia. It was still swinging and the service was not interrupted, the power did not go all the way down, but it had been dynamited. I don't know the date and time, because it did not interrupt the service but it was the same night, about the same time, it was probably within thirty minutes I would say, but I am not positive. We heard the explosion. This explosion that did not completely destroy the tower was on the Blue Ridge line in Fannin County, Georgia, a steel structure and was structure No. 31.

On April 24th, at 1:16 A. M. the line on the Blue Ridge end went out. The service was interrupted at 1:16 A. M. in Fannin County, Georgia. At 1:57 A. M. this Ocoee or Parksville line was interrupted. This was shortly after the one in Fannin County, Georgia, the difference between 1:16 A. M. and 1:57 A. M. The structure in Polk County was No. 20 and the one on the Blue Ridge line was No. 42. There were no other explosions. I have a photostatic copy of the log I have been looking at.

We have as feeder circuits, from generating plants, two lines running into the town of Copperhill; one is known as the Blue Ridge line and the other is the Ocoee line. I will file the log as Exhibit No. 1 to my testimony (Exhibit was so filed). There are two lines going to Copperhill, known as the Blue Ridge line and the Ocoee line, and the Ocoee line is sometimes called the Parksville line. In our division it is the Ocoee line.

The Tennessee Copper Company is located in Copperhill and gets its electric current from these two lines. When one line is interrupted usually the other line is turned into service and will pull the Copper Basin load. If both the Ocoee or Parksville line and the Blue Ridge line are interrupted at the same time, or close together so as to have no current on either of them, there is no current at all in Copperhill and there would not be any current to the Tennessee Copper Company.

Cross Examination by Mr. Baker.

I have no independent recollection of the exact times, with reference to the matters I have testified about. I was there on the job and do remember the dates very well and the locations, but do not remember the exact times as to the minute. I did not make this record and it has not been in my custody since it was made and I could not swear it is the same record. As I said before structure No. 72 on the Ocoee line went out at 12:04 A. M. on April 1st. That structure is located something like 5,000 feet from the cut-off or switching station. We have a feeder line coming around the switching station near Copperhill. This feeder line goes to the McPherson sub-station and makes a loop to feed different sub-stations. This explosion was on the feeder line and also on the main line, both lines went off at 12:04 A. M. This sub-station is fairly well in the center of the load so far as the town of Copperhill is concerned. I would say it is about three-quarters of a mile from Copperhill and is about 5,000 feet from where the structure fell to the town of Ducktown and from where the structure fell about one-half or three-quarters of a mile to Copperhill. The ex-

plosion in Fannin County, Georgia, at 1:27 A. M. on April 1st was on structure No. 52; it is about one-half to three-quarters of a mile from this structure to the town of Copperhill, that is, the structure was something like half a mile across the State line, in Fannin County, Georgia. Structure No. 35 which went out at 8:54 P. M. was a steel tower on the Ocoee line. The structure was about six miles from Copperhill, in Polk County. In testifying about distances I am testifying to approximate line distances and there would not be a great deal of difference by road. Structure No. 31 on the Blue Ridge line was shot sometime that same evening but the line was not put out of commission. Structure No. 31 is located in Fannin County, Georgia, in what is known as the Hot House Section. This is approximately seven miles from Copperhill. I would not say that is the exact distance. It would be about thirteen miles, estimating the distance, between the scene of the two explosions. The place where structure No. 31 in the Hot House Creek Section was blown is a heavily wooded and mountainous section and is a pretty good ways from the highway, probably one-half mile or three-quarters of a mile. The first explosion at 12:04 A. M. on April 1st, was also located some distance from the road or highway, probably one-half mile at the closest place and was located out in barren land where there was no vegetation of any kind and was clearly visible from every direction during the daytime, with the exception that the ground is hilly. In reference to the first explosion on April 1st, at 1:27 A. M., No. 52 on the Blue Ridge line, that tower was probably 500 feet from the town, situated in McKaysville,

Georgia. The explosion on the 14th of April in Polk County, structure No. 35, was about 150 feet from the highway, down the hill and across a gorge and up the side of the hill on the other side. I think I was mistaken awhile ago as to the number of the structure shot in Fannin County, Georgia on April 24, 1940, at 1:16 A. M. I believe I said it was No. 42, and after checking it that tower was No. 43. I am quite sure now it was No. 43. It is some 300 feet from the road and approximately two miles South or Southeast of Copperhill. The explosion on April 24, 1940, at 1:57 on the Parksville line, structure No. 20; that structure is located some 800 feet from the highway and near what is known as Ocoee Dam No. 3, the Diversion Dam, and was on top of a steep rocky hill overlooking the highway. The hill is unusually high and rough and almost straight up and about 800 to 1,000 feet from the highway. It would be about nine miles from Copperhill, estimating it, and the other explosion was about two miles South of Copperhill, a distance of about eleven miles between the place of the two explosions. The structure shot on April 1st is in Polk County and as I said awhile ago was about one-half mile from the highway. By that I mean the highway between Copperhill and Ducktown, the main highway. There is another country road on the other side of the line. In other words the main highway is a Northeast course and the other one more or less Southwest and on opposite sides of the line. There would not be a lot of difference in the distance from the highway at the closest point, probably about one-half a mile from the main highway and also from this country road.

(This witness was then excused.)

The witness, FREED LONG, being first duly sworn, testified as follows:

Direct Examination by Mr. Frazier.

My name is Freed Long. I live at Isabella, Tennessee, in Polk County and lived there in July, 1939. Prior to that time I had been up in Kentucky and I believe I returned from Kentucky to Polk County sometime in March, 1939. I was in Polk County when the strike was called at the Tennessee Copper Company but was not employed by the Copper Company. I had previously belonged to the Union but had a withdrawal card from my local. During the course of the strike I had occasion to assist the strikers there near the plant, I stayed on the picket line some. On or about April 13, 1940, I had occasion to go to Willie McGhee's store. A fellow named Ott Patterson came to my house after me and said someone wanted to see me down at Willie McGhee's store and he went down the road with me but didn't go all the way to the store. I walked on down to the store from my house, which is a distance of about one hundred yards. Willie McGhee's store is located in Isabella. When I got to the store a fellow named Clyde Walden was there and Clyde Walden told me they wanted to see me at the Union office and as a result of this conversation with Clyde Walden I went to Ducktown. I went with Marion Ellis, he was driving Mr. Anderson's car and I rode up in it. It was M. C. Anderson's car, the defendant here. Marion Ellis drove me to Ducktown, drove me to the union office or Mr. Anderson's office, M. C. Anderson's office. When I got there I went in, went in Mr. Anderson's office. When I got there Mr. Anderson was there, Johnie McGhee was

in there, the Huffman boys were there, Clint and Clyde, and Felton Woodward, I believe, was there, also Rans Smith and there was a girl that worked there, she was in there too. When I got there they were discussing plans for reducing production of the company, The Tennessee Copper Company. Three or four of those men left, three of them left, I believe, in just a few minutes after I arrived there. I believe they started to leave as I got there, the two Huffman boys and Felton Woodward left. Mr. Anderson said they were going to try to shut the plant down and wanted to kind of jamb up the mine a little bit and wanted me to help them do that; the plans were to go down in the mine and blow up the magazine, they were going to shut the power off too, somebody was. Mr. Anderson, Rans Smith and Johnie McGhee and myself were talking about blowing up the mines and the method to use in doing that. I asked him how he was going to do it and he said it would be done by wires, said they wouldn't need fuse—Mr. Anderson said that. His idea was that by blowing up the mines they could stop the production of ore and they would shut the plant down. He said they would go down in the mine and blow up the magazine inside the mine. It was decided to do that the next night, Sunday night. There was some talk about the power being shut off. They didn't discuss who it was going to be to do it or how it was to be done. Nothing was said about blowing the towers there that night or that afternoon, they just said the power would be off. There was also some discussion about having some clocks wired. I didn't see them but they were talking about them. I do not know how they were to be used. My

connection with it was that I was supposed to go down there with them in the mines. I don't know who I was to go with. There was no further conversation had there at that time. That was all I heard. The next Thursday, which was on April 18th, 1940, I had another conference with some of these parties, this conference was at the Odd Fellows Hall at Isabella, Tennessee, on April 18, 1940. Mr. Anderson was there, Martin Simonds was there, Ed Simonds, Felton Woodward, and Walter Bell, little Walter Bell, Earl Hubbard, Wayne Henry, Meegs Collins, myself and Johnie McGhee. They talked about blowing up the mines and shutting the power off again, there was a little discussion about the power line, they somehow couldn't get going on it. Ed Simonds said on the 14th two of the men ran off and wouldn't help him. He said they were the two Green boys, Mutt and Tate, I don't know them. They wanted them blown up again, but didn't know whether they were going to meet him again and do it or not, Mr. Anderson wanted them blown up, that is M. C. Anderson, the defendant here. He wanted the towers and poles blown up again as I understood. I suppose the others agreed. Ed Simonds was supposed to look after one end and Felton Woodward the other end; Ed Simonds was supposed to look after the Blue Ridge end and Felton Woodward was to look after the lower end which is known as the Parksville or Ocoee line. I do not know who was going to help them or what arrangements would be made. They were going to get the other men themselves. That was not discussed in the meeting who they were going to get. Ed Simonds said he believed he could get those men to go with him

again to blow up the tower on the Blue Ridge end. Felton said he didn't know about it, whether it could be handled or not. That was in regard to blowing up the towers for the next Tuesday night after that, the next Tuesday after Thursday. Felton finally agreed he could swing the lower end. He gave assurance it would be done, he said "I am sure we can go through with the lower end of it." The time was set for the next Tuesday, April 24th, I believe. They decided since I had not had any experience in the mines it would be best for me not to go inside. I don't remember who said that, it is possible two or three did. I can't remember any certain one that said that. Mr. Walter Bell, he knew the mine and he would rather have someone else who was more experienced in mining to go with him. That is what Walter Bell said, Bell said he was trying to get Otis Postell to go with him. I was supposed to stay outside and kind of watch things up there for them. I was supposed to keep them from being surprised going in or out. I have seen this rifle before. I had the rifle. Earl Hubbard gave it to me. He didn't tell me what to do with it when he gave it to me. He just gave me the rifle. I left it at home for a while. He gave me the rifle at the back of Willie McGhee's store, I don't remember the exact date but it was before the last meeting—I don't remember whether it was before the meeting on April 18th or afterwards. Earl told me there was a rifle and we talked about the caliber of it and we thought it was a 30-30 and tried some 30-30 shells in it but they wouldn't fit and we didn't have any ammunition. We didn't discuss anything about what was to be done with the rifle, how it was to be used,

or any other plans at the time he gave me the rifle. I just took the rifle home. I imagine I was supposed to use the rifle to protect their entrance and exit from the mine. At this meeting it was decided I was not to go down in the mines but it was agreed for me to do the watching.

Cross Examination by Mr. Baker.

I am 34 years old and have lived at Isabella all my life. I worked up in Kentucky for a while for the United States Coal & Coke Company, I worked almost all winter, was laid off in February, the 27th of February, I believe. Before I went there I had worked for M. J. Carroll Company, that was a contractor building a road up there and I guess I worked for him a couple of months. Before that I worked for the United States Coal & Coke Company, I don't remember how long. I worked the winter before that and was laid off in the spring and came back and worked on this road and went back to Lynch in the winter. Before that I worked for the Burnell Company, about four months. Before that I worked for the Cavalier Corporation about two months. Before that I worked for the Ducktown Iron & Coal and Tennessee Copper Company about eight years and I was in the army before that. I am not working anywhere now and have not worked anywhere since the 11th of December. I worked before December a while in North Carolina. I came back from Kentucky to Isabella in March, 1939, and was around Isabella all the time from March, 1939, until April, 1940. I didn't work anywhere during that period of time, I did help my dad on his farm a little. I am married and have seven children, and all the time from March, 1939, to

April, 13, 1940, I didn't work anywhere. I had very little money when I came back from Kentucky. I did draw a little compensation while I was down here, workman's compensation. I stayed in the army a year and eight months and fourteen days and bought my way out. I had been kind of helping around the picket line up there during the course of the strike. The strike started July 14, 1939. I didn't start helping out when the strike first started but did get interested in wanting to help out on August 28, 1939, and I helped on it from then on. My brother asked me to help. I helped until about April 13th—somebody sent for me to come to Willie McGhee's store. I didn't know what anybody wanted with me but I did go down to Willie McGhee's store. When I got down there I found Clyde Walden and he told me they wanted to see me up at the Union office, at M. C. Anderson's, that is the words he used, but didn't say what they wanted with me. Anderson's car was there and Marion Ellis driving it. I got in the car and we drove to Ducktown and we went to Anderson's office. That was where all the business was handled. Anderson's office was on the corner above the post office about around the corner I should say. It was at his residence, I believe he had a room in the building, it was a private dwelling house and on the highway that leads from Ducktown to Turletown. It was not at the regular union office. When I got there Mr. Anderson was there, John McGhee was there, the two Huffman boys, Felton Woodward, Rans Smith and the young lady that worked there, her name was Hall. There might have been some others there but I don't remember it. I don't know what kind of a

meeting it was. I don't remember who spoke to me the first one when I got in, but several of them spoke. Clyde Walden knocked on the door and someone opened the door and I walked in but Clyde didn't go in. I don't know where he went. The door was closed after I went in. These Huffman boys and Felton Woodward was fixing to leave. I didn't speak to Felton Woodward or Clyde or Clint Huffman; they were preparing to go when I got there and Mr. Anderson talked to them a while and they left and I don't know what he said to them. I then went in the back room where I sat down. Mr. Anderson was seated directly in front of me. John McGhee was on my right. At that time there was not anybody present except Rans Smith, Anderson, John McGhee and I—Miss Hall had also left. Marion Ellis didn't go in after he drove me up there. I don't know where he did go. Anderson said when I got in he said "Freed, we are going to try to stop production in the Tennessee Copper Company" and I said "yes, we have been trying to do that for quite a while." That was his greeting to me when I walked in and sat down, he said "we are going to stop production at the Tennessee Copper Company." That was the trend of the conversation. He said practically that, I wouldn't say that was his exact language, his exact words, but something like that. I said "that is what we have been trying to do for a long time," something like that, I don't know just how I said it. John McGhee and Rans Smith didn't say anything in answer to that. I asked Anderson how he was going to do it and he said we are going to blow up the mines. I don't remember what I said in reply to that. I don't recall what

Rans Smith or John McGhee said. Anderson said it was going to be done with a fuse, said it would be done by electric explosion. He didn't tell me how or who was going to do it. That is what he was wanting, he wanted me to do it, wanted me to be one of them but he didn't tell me who the others were going to be. He mentioned someone but he didn't tell me who it was. Rans Smith and John McGhee were not mentioned. John said he couldn't, he had been in the mines too long and wanted someone who could climb a ladder faster. Rans never said anything at all. Anderson said we are going to get together again the next day and that is all the conversation we had on that particular occasion. When we got ready to leave John McGhee took me home. They were supposed to come over to Isabella the next day, Sunday morning, on the 14th of April. They didn't come over the next morning. McGhee took me home in Anderson's car after the meeting. I guess I was in Anderson's office at this meeting an hour or maybe a little bit more and this is the full conversation that took place, there might have been a little small talk but I don't remember it. It was dark when I left there, just getting dark, and was not dark when I got there and this was on the 13th day of April, on Saturday. I didn't talk to Anderson any more about anything until April 18th. I may have seen him but I don't remember it. I can't say whether I talked to John McGhee or Rans Smith, either one, but I know we didn't talk over what we had talked over on the 13th any more. On April 18th, at the Union Hall at Isabella I was not invited over there, I was already over there. We had been sitting in the hall playing rummy,

several of us, I don't remember who all was there. I guess we had been playing rummy three or four hours. Anderson, Martin Simonds, Ed Simonds, Felton Woodward, Earl Hubbard, Wayne Henry, Meegs Collins and John McGhee all came in, but they didn't come in together, they came in at different times. After they all got there I started to leave, I didn't know anything about the meeting at that time. Mr. Anderson told me to stick around, that they were going to have a little meeting directly. I remember distinctly Anderson, Martin Simonds, Ed Simonds, Felton Woodward, Earl Hubbard, Wayne Henry, Meegs Collins, John McGhee were present at that meeting and the meeting lasted about two or three hours. I cannot remember definitely the names of all the men at the meeting, but I can't remember the name of a single man I played rummy with that morning. I know why they happened to have the meeting at Isabella. It was not a called meeting. They came down there to have the meeting because it was a quieter place, more secluded they figured, it was more secluded than Anderson's office, there was more going in and out and wouldn't be so noticeable. The union office at Isabella was headquarters for the union and there were lots of people coming out and in at the union hall, getting relief and one thing and another, practically all the time. When the men I have mentioned all got there they locked the door so nobody else could get in and Anderson asked me to come in the meeting before the rest of them left. I had already left the room where the rummy game was at that time and started to leave and Anderson told me to come in on the meeting, he said stick around we are go-

ing to have a meeting. After the door was locked Anderson brought up the subject of the mine. He wanted to know if anybody had any suggestion as to blowing them up. Probably all of the men offered a suggestion, I can't say who made the first one. I didn't make a suggestion, I don't know anything about the mines, I had never been in them, I didn't hear Martin Simonds make a suggestion. I don't believe Ed Simonds made a suggestion about the mines—Felton Woodward didn't. I don't remember whether Wayne Henry did or not. Walter Bell did make a suggestion, he suggested they get somebody that was experienced in the mine in my place. I don't remember what time of the conversation this was. I don't remember whether Earl Hubbard made a suggestion. John McGhee was arguing with Martin Simonds about how much powder it would take to pull certain articles. I don't remember what Meegs Collins said. M. C. Anderson asked Wayne Henry about an electric clock to set these explosions off with. I can't remember everything he said. The only thing I can remember Anderson said was he asked Wayne Henry about some clocks. He probably said something else but I told you I can't remember everything he said. He probably said something else, I can't remember his exact words. He asked questions about the mine, asked Martin Simonds and John McGhee questions that I didn't understand because I didn't understand much about it. He asked them about the situation of the mine and things like that. He just asked about the location of the magazine and levels and so on, I didn't understand it, I didn't know the details of it and I don't know how long it took him to ask those questions,

whether it was ten minutes, an hour or two hours. I was an electrician in a coal mine, and worked down in the mine but it was a drift mine, that was a different type of mine. It was an underground mine but it went right straight back through, didn't go down. Martin Simonds was arguing about the amount of powder it would take, I don't recall his exact words, he was talking about the pulling power of dynamite, the only single word he said that I can remember, the only single word he used, he was talking about dynamite, he used the word "dynamite." I don't know his exact words, but he was talking about the pulling quality of dynamite. Felton Woodward thought it would be a hard job to blow up the tower; he said he didn't know whether he could manage it or not, but would try his best. Anderson wanted his definite assurance on it and he finally agreed it could be done. I believe I mentioned a minute ago that Anderson said that. You asked if that was everything Anderson said and I told you everything I could remember but I said I couldn't remember everything he said. Felton finally gave him a definite answer. Anderson told him he would have to be definite about it and Felton finally assured him it would be done. Wayne Henry didn't have much to say. I don't remember anything he said, not the exact words. I don't remember a thing in the world Wayne Henry said. I don't remember anything Earl Hubbard said, not the exact words. I don't remember anything Meegs Collins said, I recall he talked some but I don't remember exactly what he said. I have told you all the conversation that I can remember at this meeting on April 18th at the union hall. I wouldn't say this is all but that is

all I remember so far, I might recall something later on. All the conversation was not in reference to blowing up the mine. That was not all. This rifle Earl Hubbard gave to me, he gave it to me between McGhee's store and my house. I live back of the store and it was between the store and my house. He gave me the rifle and then walked to the house with me and took it in the house and tried to put one of these 30-30 shells in it but it wouldn't fit. He didn't tell me anything to do with the rifle and no discussion was had as to what I was to do with it. He just said here is a rifle, and I believe he carried it up to my house himself, and then tried th[illegible] shells in it. I would say this is about a 30-40 caliber rifle, the rifle does not show what caliber it is, it doesn't tell on the rifle. These are the only two meetings I ever attended, I didn't do anything I was supposed to do at the meeting of April 18th and I didn't do anything about the meeting of April 13th.

X. Did you ever see me before? A. I believe so.

X. Where did you see me? A. Copperhill, didn't I?

X. When did you see me there? A. Last Monday, wasn't it?

X. What time of day was it? A. It was in the afternoon, about the middle of the afternoon.

X. Right close to Mr. Howell's garage wasn't it? A. Yes, sir.

X. (Stand up, Mr. Anderson, Wayne Henry, Rans Smith and John McGhee.) These four men were with me, were they not? A. Yes, sir.

X. You talked to all of us there? Didn't you? A. Yes, sir.

X. Anderson and I and Rans Smith and John McGhee were sitting in Anderson's car, weren't we? A. Yes, sir.

X. Wayne Henry was standing on the outside talking to us from the outside, wasn't he? A. Yes, sir.

X. You came up there to us, didn't you? A. Yes, sir.

X. Did we send for you? A. You didn't.

X. Anybody else send for you? Anybody else send for you?

The Court: Tell us.

A. No, sir.

X. You came up there voluntarily, didn't you? A. Yes, sir, but it was a surprise to run into you all, I wasn't looking for you.

X. But you came up there and you had some names written on a little piece of paper you wanted to give us, didn't you? A. No, sir.

X. And said the Marshal had been up there subpoenaeing some witnesses and you wanted to give us the names of those witnesses? A. I said he had a subpoena for me.

X. And you gave us the name of some of the witnesses, didn't you? A. I said he was subpoenaeing some.

X. And I had the piece of paper you gave me and you said you wanted it back? A. You took the names, yes, sir.

X. And Mr. Anderson wrote them down in a little book? A. That is right.

X. And you said they had subpoenaed you? A. Yes, sir.

X. You said you didn't want to testify for the government, didn't you? A. I didn't make that remark, no, sir.

X. And you said there in the presence of all of us, and without any suggestion on our part, that if we would give you $25 you would swear anything we wanted you to? A. No, I didn't make that statement.

X. You didn't make that statement? A. No, sir.

X. You didn't say you would swear anything we wanted you to if we could give you $25? A. Nothing like that mentioned.

X. But you only had $1.50 in your pocket and needed some money. A. That was not mentioned.

X. That was not mentioned? A. No, sir.

X. How much did you have in your pocket then?

Mr. Frazier: I object to that.

A. I guess I had about $12.

X. You didn't have any conversation along that line at all with us? A. I said the Marshal was hunting me and told my wife he would be back.

X. And didn't I tell you then and there I wished you could get $25 some where but I wasn't engaged in that kind of business and wasn't going to pay you anything. A. You said, "what you know about that" and I said nothing—that is the words you said.

X. You also told us there you didn't know anything about it? A. You asked what you know, and I said nothing is my words.

(This witness was then excused.)

The witness, W. J. HUGO, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Wm. J. Hugo. I am employed as Division Credit Manager of the Gulf Refining Company at New Orleans. I was summoned in this case from New Orleans. As such Division Credit Manager I now have with me some of the records from my office. I have a record here dated April 9, 1940, a photostatic copy showing the purchase of gasoline here in Chattanooga by M. C. Anderson on that date. The original was sent to Mr. Anderson with his statement and this is a photostatic copy of the original. The purchase was made on April 9, 1940, and the price was 17 cents a gallon, plus tax of 8 cents a gallon. The total amount of gasoline bought amounted to $2.99. There was also one quart of motor oil, 35 cents, making a total purchase of $3.34. The Gulf Refining Company grants credit to certain individuals. On said individuals we first receive an application for a credit card, which is passed on. The purpose of the card is to enable them to buy gasoline or petroleum products from any authorized dealer in the United States of whatever they may have. They, in turn, send us the invoice and, at the end of the month, we send a statement to the customer, attaching the original invoices to the statement, and make a photostatic copy of the invoices for our record. I have with me the application of M. C. Anderson, the application was made on May 7, 1937, and credit card was issued May 12, 1937. The number is 8-A-5436. The number on the purchase of April 9, 1940, is 8-A-5436 and the name M. C. Anderson is signed to the ticket.

It is supposed to be his signature. He has to sign his name in order to make the purchase. The dealer from whom the purchase was made here is C. H. Jones, Chattanooga, the street location is stamped over a line on the invoice, looks like some street and Broad, says Gulf Products, Tires and Batteries, signed C. H. Jones. That is his assignment to the Company. Jones is an authorized dealer in Chattanooga. This photostatic copy is made from the original. All of the invoices for one customer are in order and these invoices are passed through the recordtype machine and a film is made. I have the film with me. Of course, there is no way of saying what is on this except by using a special machine. The photostatic copy is made from this film and from the original invoice. I file this ticket as Exhibit No. 1 to my testimony.

Cross Examination by Mr. Baker.

The number on the card is 8-A-5436. I do not have a record of the purchases of Mr. Anderson from the C. H. Jones Filling Station for a period of time between, beginning April 1st to April 20th of 1940. I imagine those are on this roll of film, because it takes them all, but I didn't bring copies of them, that is the only one I had, because that is the only one that was subpoenaed. I do not have any personal recollection of Mr. Anderson's account. The purchase was made on the fourth and ninth, April 9, 1940. The Government didn't ask me to bring any other records, other than this original record.

Re-Direct Examination by Mr. Badgett.

Mr. Anderson didn't have any other number with us or our Company, and he had had this number since

1937. The Gulf Company does not change numbers annually.

(This witness was then excused.)

The witness, FREED LONG, being re-called for further cross examination, testified as follows:

Cross Examination by Mr. Baker.

In reference to the meeting on April 18th, at Isabella. That meeting there was something in the afternoon, I would say around the middle of the afternoon. The meeting started sometime between two and four and lasted about two or three hours. It wasn't dark when the meeting broke up. I guess it was about an hour before dark, I don't know what time it was.

(This witness was then excused.)

The witness, REED E. STANRICH, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Reed E. Stanrich. I live at Copperhill, Tennessee, and have lived there all my life. I have examined this here and it is something like I found on the Rogers Ferry Bridge. The Rogers Ferry Bridge is about two miles from Copperhill, down the river. I found one piece on the bridge and the rest was under the bridge on an island there in the river. These two here and this here is something like I found on the bridge and some was under the bridge. After I found it a couple of fellows were going to work in the mines and asked me what I picked up and I told them and they hauled me up where I worked at and later a couple of company guards came

and asked me to show them the stuff and I got a rope and swung off the bridge and picked it up and gave it to them. I do not know the names of the men, but I did turn this over to them. The wax paper is off of dynamite.

Cross Examination by Mr. Baker.

I work on the WPA. At that time I was working at the Grassy Creek Crusher—it belongs to the Government and was working for the WPA and when I found the stuff I was working for the WPA. I don't know the date I found it. I don't know what month it was. I don't know whether it was April, May, June or July, all I can say is I know it was Monday morning, because I was returning to work. I can say the sun was shining after that about seven o'clock. I can't say whether it was in the year 1940. I won't say whether it was 1938, 1939 or 1940, when I found this stuff. I told a couple of fellows who worked for the Tennessee Copper Company that I had found it and they were guards for the Copper Company. The two men I told hauled me to work, just about a mile. They came up behind me just as I picked it up and had it in my hands, they came by up on the other end of the bridge. I picked up one small piece on the Bridge. I held it for a minute and said well, myself, there had been ten cases of dynamite placed in the magazine up there you see where I had been guarding up there. I had guarded on Friday and Saturday night at this crusher, and had ten cases of dynamite stored there. I guarded it but didn't have access to it. In about ten minutes, I imagine, after I got to work, two company guards came out to see me and asked me what I had

found and they took me back to the bridge and when I got back to the bridge I went down under the bridge and brought it up to them and turned it over to them. They stood around for a while and talked and I got the rope fixed up and got in the car and they drove me up and let me out and they went on about their guarding business and I don't know anything more about it until a couple of government men come to the crusher and asked me about it. The stuff was on the foundation in the center of the bridge. The foundation separates the river there and there is a little island and the little island is in the river under the center pier. The bridge must be fifty feet above the river and I went down the fifty feet and tied it on the rope and they pulled it up and I went back up the rope. I didn't identify this piece of paper, a blue piece of paper, or the brown one; they were all the waxed paper, about ten feet apart. The paper was not in two pieces when I picked it up. I let one of the fellows have the paper I picked up on the bridge at the crusher the night the explosion occurred and he never could find it to give it back, said he stuck it in his pocket. All the pieces of paper here was under the bridge. I don't know how many I picked up, I didn't count them. I was guarding the WPA magazine there for two days. They use a great deal of explosives on the same road and dynamite was there part of the time. The dynamite was separate, however, from the rock crusher. The rock crusher was about a mile away from the bridge. After I found the paper the power line or tower was blown down about a quarter of a mile from where I worked and you can see it from the crusher, it sits up on

the hill. It is about a mile from the quarry to the bridge and about a mile from the bridge to where the line was blown. The tower was blown on Sunday night and it was on Monday morning I found this paper. I have been convicted of burglary in the State of Georgia and received a sentence there. That is the only offense I have ever been convicted of.

Re-Direct Examination by Mr. Badgett.

I don't remember the date the power line was blown. It was on Monday morning I found the paper and it must have been between Sunday night and Monday morning. The dynamiting occurred Sunday night. I didn't find any kind of a bag there at that time. One of the guards said they picked up a bag but I didn't see them pick it up. I noticed the writing "Hercules Powder" on the paper I picked up and that is the writing I noticed, "Hercules Extra LF 60%, Hercules Powder Company, Wilmington, Del."

Re-Cross Examination by Mr. Baker.

I wasn't working at the rock crusher in 1938 and 1939, when there were any lines blown up. I worked there in 1939 and 1940. I don't remember any lines being blown up in 1939. I don't remember whether it was found right after one of them was blown or when it was blown in this case.

(This witness was then excused.)

The witness C. L. CAMPBELL, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is C. L. Campbell and I am Chief Deputy Sheriff of Polk County and have been Chief Deputy Sher-

iff for nearly three years. I remember when certain lines of the TVA were dynamited. I saw the things you have there when the first job was blown over there. It was blown three different times. I believe the night of the 31st of March, 1940. It was reported to me some boy found this, or noticed it on the river bank and I sent a couple of my men to investigate and they brought it back to me. I sent Jim Ellis and Leroy Eller and they came back with that and turned it over to me. I later turned it over to the Federal authorities, the FBI, I don't remember which one was there, there were several of them in there.

On the night of March 31st, 1940, we saw Mr. Anderson's car come up what is called the Pleasant Hill Road there and we got suspicious of him and followed him, whoever was driving the car and we couldn't keep up with him and he run off and left us and we went into Copperhill and his car was sitting at the picket house near the L. & N. station. That is M. C. Anderson's car, this National Organizer and the car was sitting at the picket house and we went above there and turned around and thought he would come our way, the way we were, to Ducktown, but he didn't come that way, he went the other way and we lost him. About a few minutes before twelve o'clock that night, fifteen minutes before the first explosion went off we were sitting at the intersection of the Ducktown, at the edge of Ducktown and saw a car coming and it stopped probably 150 or 200 feet before it got to us and somebody got out and went in a house there and the car come on up then on the corner about the YMCA on the main street of Ducktown and we

stopped him there and searched him. Marion Ellis, one of the defendants, was driving the car. At that time I didn't think I had found anything. We found a brace and bit laying in the floorboard, between the two seats, in the back floorboard. That was about fifteen minutes before the explosion. The explosion was at the right between Ducktown and Copperhill, in Polk County, and was on a TVA power line. That is a wooden power pole; holes were bored in the poles and dynamite stuffed in there. We found a brace and bit, a little bit laying in the floor and big bit, looked like an inch or inch and a quarter, I can't tell the size of the holes that were in the power poles that were dynamited. I couldn't see the holes but there were some shavings around where they had been bored. He had one little bit, probably between a quarter and half inch bit laying on the floorboard and one about an inch or inch and a quarter in the brace. I didn't see anything else, didn't take the bit out at that time and didn't think anything about finding the brace and bit in a man's car. The car belonged to Anderson. Ellis said he had been to Bryant's Chapel and had been taking his wife for a ride and it was then something like ten or fifteen minutes before twelve o'clock at night.

Cross Examination by Mr. Baker.

He had his wife and baby with him, looked like a pretty good size kid, about 18 months or two years old. He didn't tell me the baby had the colic.

Q. You searched his car? A. That is right.

X. You didn't have a search warrant of any kind? A. No, sir, I did not.

X. That was the time you was searching everybody's car in the Basin?

Mr. Badgett: We object to that.

The Court: Sustained.

Mr. Baker: We note an exception.

We found a brace and bit that was laying in the floorboard, I found some wire in the trunk. The bit we found was just a brace and bit and a bit you put in a brace. I don't know whether it was a solid bit or not, it was a bit of the type you are indicating there. I don't know whether it was an expanding bit or not, didn't pay much attention to it and didn't examine it closely. I doubt if I would recognize it if I saw it again, I didn't pay attention to it. I don't know whether I would recognize the brace or not, I never paid particular attention to it. I searched Marion Ellis' house the next morning and saw a brace and bit there. It wasn't the kind I saw the night before—no, I don't know whether I saw one in the house or not, I don't believe I did, I wouldn't be positive, I am not positive I saw any in the house. We were searching the house for it and if we saw one it was one that had been out of use, didn't show use, rusty probably. We had a search warrant for his house at that time.

I started the next morning to go to the scene of this explosion and went down and the fellow with me went on to the scene on the Georgia side. It was on the Georgia side where I saw the shavings where I believed holes had been bored. The one I went to see in Copperhill was on the Georgia side, barely out of the city limits and the other one was between Ducktown and Copper-

hill. The place where I saw Marion in the car was probably two miles from the one on the Tennessee side and was about fifteen minutes before the explosion went off. The place I saw him was about five miles from the place of the explosion in Georgia. I have never been to the scene of the explosion on the Tennessee side. I started out, but gave out; but the fellow with me did go, Pryor Crowe. I sat on the hill and saw him in the ditches and watched him until he came back with this fuse. Jim Ellis and Leroy Eller turned these papers over to me. I didn't place any mark of identification on them. I have seen a great many like that.

Re-Direct Examination by Mr. Badgett.

There is printing on that paper there, it says "Hercules Extra LF 60% strength"—that is the paper I turned over to the FBI. This paper here, I guess, is the same thing, I don't know whether it is the same paper or not, it is the same writing.

Mr. Badgett: Let the record show that it shows a circle inside a circle that says 100 feet Safety Fuse, with red quarter moon with the word "Crescent" written across the red quarter moon and at the top of the circle it says "The Original Manufacturer of Safety Fuse." At the bottom of the circle it says "Established 1836, and another circle says Ensign-Bickford Co., Simsbury, Conn."

Re-Cross Examination by Mr. Baker.

I don't know if I picked up the brace and bit in the car and looked at it or not, I pushed it over a bunch of papers and stuff there. I don't remember whether I picked it up or not but I do remember pushing it over.

I was on the left-hand side of the car and looked in the back and there was a bunch of papers there and I pushed them in there. I don't believe I took it up in my hand. I don't know whether it was an inch or inch and a quarter or not, it was a big bit and looked to be an inch or inch and a quarter. I didn't examine it to see how long it had been since it had been used. I just didn't pay much attention to it, just noticed it. I don't remember whether I saw one in Marion Ellis' house the next day or not. If there was one there, it must have been rusty and I didn't pay attention to it, and I wouldn't be positive whether I saw one or not.

(This witness was then excused.)

The witness, PRYOR CROWE, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Pryor Crowe and I am a Deputy Sheriff in Polk County, Tennessee, and have been such deputy sheriff for about 15 or 16 months and was a deputy sheriff in April, 1940. I know a boy named Reed Stanrich. I have seen the papers you passed to me. Jim Ellis and Leroy Eller gave them to C. L. Campbell, Chief Deputy Sheriff, and I was talking with him and was present when they were delivered to Mr. Campbell and these are the papers they gave to him. I was present when M. C. Anderson's car was searched and Marion Ellis was driving it. There were some old papers, circulars or something like that on the floorboard in the back seat and a brace and two bits, one small bit, it was on the floorboard and was not connected to a brace. The large bit was con-

nected to a brace. I would say the large bit was an inch or inch and a quarter bit. I asked Ellis where he had been and he said he had been to someone's house on Bell Hill. When we searched his car it was about fifteen minutes to twelve o'clock at night on the 31st day of March, 1940. It was about quarter to twelve when we got through searching his car and the first shot went off about five or six minutes after twelve o'clock and that was the first explosion. The strike had been on for six or seven months and that is the first explosion on the Tennessee Valley power lines.

Cross Examination by Mr. Baker.

I have been a deputy sheriff 15 or 16 months, I was employed on August 23, 1939. I was hired by B. E. Biggs, Jr., the Sheriff of Polk County, about one week before the company re-opened after the strike, the Company started work on the 28th of August, 1939, and I was hired on the 23rd of August, 1939. I was just a deputy sheriff is all I know and I was stationed in Ducktown. I did not have charge of any guards at Ducktown but Frank Clayton was in charge of the deputy sheriffs there and I was working under him. Some people called them company guards; they might have been.

X. How many extra deputy sheriffs were put on?

Mr. Badgett: I renew my objection, that has gone far enough, it is wholly immaterial and I didn't go into that on direct examination.

Mr. Baker: It shows the motive and purpose back of this whole transaction, we will make it competent.

Mr. Badgett: I object to that statement.

The Court: I sustain the objection. I cannot see where a deputy sheriff or guard will have anything to do with dynamiting Government property.

Mr. Baker: We will connect it up later. We except to the Court's ruling.

I was with Roxie Campbell from about six o'clock on the night of March 31, 1940, on up until one or two o'clock the next day. I could not be sure I saw Marion Ellis before the time I searched his car. We saw the car before that and had followed the car during the evening. It was about forty-five minutes to an hour before that that we followed the car. When we first saw the car it came off the Pleasant Hill Road between Ducktown and Copperhill, back towards the North Carolina line, out from Isabella. It was something like two miles from where we first saw the car to where we searched and stopped it. During the hour's time I am speaking of after the car came off the Pleasant Hill Road, the main highway across down this way, the Pleasant Hill Road comes this way and one this way, we went to this road and going into the main highway and he came out and we took after him. We went on down the highway back of him. He went on in to Copperhill and the car was parked there at one of the picket houses. We didn't search the car there at the picket house. We went by it and turned around and come back and it was gone. We made another trip back through Copperhill and came back to Ducktown and the car come up behind us. We pulled up there in front of the union office and saw the lights of a car coming up the highway. He stopped 150 or 200 feet away and let a man out of the car and then came on up.

I know where this power line on the Tennessee side was shot on that date. The closest way there from where we searched the car to where the power line was shot would be to drive back about half way between Ducktown and Copperhill and walk across about half a mile. He could drive the road way that goes in there, could drive directly, or closely down on to it, but I doubt if a car would go in there. This road I speak about goes off the road from Ducktown to Benton and goes something like quarter of a mile from where the line was shot. I went out to the place where this line was shot, and I walked from the highway between Ducktown and Copperhill about half a mile. I didn't examine the old road to see if anybody had been out there in an automobile. I didn't see the road at that time. I later drove in a car over it with Sheriff Biggs and Mr. Roach and I guess it is hardly a quarter of a mile from where we got out to where the line was shot. It was sometime after the shooting when I drove out there with Sheriff Biggs and Mr. Roach, I don't remember just how long. If there had been any car tracks there before, they wouldn't have been there then. That was a week or so later. I never saw an automobile on this road.

X. Did you have a search warrant when you stopped Marion Ellis and searched the car?

Mr. Badgett: We object to that, it is immaterial.

The Court: Objection sustained.

Mr. Baker: We except to the Court's ruling.

We did stop him and search the car and there was a brace and bit there in the floorboard, about an inch

and a quarter bit. It was just a bit is all I know. The bit was just like the one you have there.

X. Were you on salary or on fees?

Mr. Badgett: We object to that as being immaterial.

The Court: I think so but let him answer.

A. I got a salary and fees both.

X. Who paid your salary? A. Well—

Mr. Badgett: We object to that.

The Court: Objection sustained.

Mr. Baker: We note an exception.

I do not have a beer stand at Ducktown or a cafe or any interest in one. I was formerly a highway patrolman, going to work in 1937 and stayed approximately 18 months or two years and was discharged. On my discharge it said they were cutting down the division of driver's license. I was not discharged for intoxication.

Re-Direct Examination by Mr. Badgett.

At the time I went to where this dynamiting occurred I saw some boys about there and some fuse there at the scene on the ground and there was also two pair of foot prints. I didn't follow the foot prints but I noticed they started down the hill from the pole, in the direction of Rogers Ferry Bridge.

Re-Cross Examination by Mr. Baker.

I don't know how far the Rogers Ferry Bridge is from where the pole was shot. I have never been down that way and have no idea how far it is. I have lived up in that section 15 or 16 months and came there from Tellico Plains and the day I came from Tellico Plains to Polk County I was appointed a deputy sheriff. I didn't

have no appointment before I came down there. I came down to see if I could get a job. I went to the place where this power pole was shot the next day after we searched Marion Ellis' car, which was April 1, 1940, between eight and nine o'clock in the morning. We had been up all night and I don't remember just exactly the time. Mr. Campbell went part of the way with me and then I went on to the scene of the explosion and for the purpose of inspecting the explosion and see if I could find out who did it. I picked up part of the fuse and brought it back with me to the car and put it in Mr. Campbell's car and left it there. He was the Chief Deputy Sheriff and I turned it over to him. I didn't pick up all of the fuse. I didn't follow the two sets of foot prints I saw, I just noticed them, noticed two steps and I didn't count the number of steps I could see the foot prints. The foot prints were absolutely distinct and clear and I was up there for the purpose of apprehending whoever shot that power line and I looked at the foot prints and saw them leading off and without undertaking to follow them I picked up some of the fuse and went back to Mr. Campbell's car. I told Mr. Campbell that I had seen the foot prints there and when I told him he just drove off and we came back to Copperhill. I made an effort to get an impression of the footprints the morning I was there, I measured them with a stick, I didn't have a rule, to see how long they were and that is the only effort I made to preserve the foot prints.

Re-Re-Direct Examination by Mr. Badgett.

I got part of the fuse there and left part there and I didn't disrupt the part I left in any way.

Re-Re-Cross Examination by Mr. Baker.

There was more than one piece of fuse there around the poles. The pole was blown off something like a foot or more above the ground. There were no auger marks on the pole, but there were auger shavings around on the ground. I picked up some of those shavings and carried them to Copperhill and gave them to Sheriff Biggs. I don't know how many I picked up, probably six, seven or eight and I picked up near 100 and 200 feet of fuse and it looked like I left about the same amount there. The fuse was not fastened to the pole, the pole was laying across part of it and the best I remember the end of the fuse was some two or three feet away from the base of the pole.

(This witness was then excused.)

The witness, LEROY ELLER, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Leroy Eller. I am a deputy sheriff in Polk County, Tennessee, have been a deputy sheriff there since the 23rd day of last August and was a deputy sheriff on or about March 31, 1940. I know Reed Stanrich and on or about that date I saw him at the rock quarry. I went down there to see him. We had information he had found some dynamite casings down on the river bridge. We had a conversation with him down there and he had one-half of one of these casings when we went down there. I have seen the paper like that before. I saw it down on a sand bar in the river. We

saw that there. That is me and Jim Ellis, another deputy sheriff. Stanrich was with us at the time. I think that you have there was found on the river bank down under the bridge. Stanrich went down off the bridge on a rope and down to the sand bar and picked this up. I don't know the name of the bridge, it is out from Copperhill, in what is called the Grassy Creek Section on the Grassy Creek Road. Stanrich went down on a rope and we had handkerchiefs in our pocket and we lowered them to the boy and he tied the corners and we pulled them up with the rope. I found a bag there, it was laying on the bank. That is the bag there you have that I saw lying on the bank. After we got the stuff there we tied it up in handkerchiefs and taken it to our headquarters and kept it. We turned it over to Sheriff Biggs and two gentlemen with him; FBI men, I don't know their names, I see one of them over there at the table, Mr. Roach. I will file the bag as Exhibit No. 1 to my testimony.

Cross Examination by Mr. Baker:

I was employed as a deputy sheriff on August 23, 1939. I was in Polk County when I was employed and I came from Petros where I was a guard, to get a job. Nobody sent for me, I just came down there to see if I could get a job. My home was not in Polk County then, but it is now. I lived in Monroe County then. The Company started operations on August 28, 1939, and I got my job on August 23, 1939. I had been a prison guard at Petros since March 8, 1938. The casings were down on the sandbar close to a pier near the center of the river and the other was over on the bank. We let

this boy down on a rope to pick them up and he sent them back up to us. We got the information as to where it was from Stanrich who had seen it when he was coming to work. He didn't tell us about it, but someone come along and picked him up and drove him to work and he told him about it and they in turn told us. I know where the power line was shot on the night of March 31, 1940. It was approximately three-quarters of a mile, I don't know exactly, from the place where we found these papers. I have not been over the route to see just how far it was. The paper bag I have identified was found on the bank at the end of the bridge, lying at the edge of the water. I picked the bag up, walked under the bridge and picked it up and it was not wet, it was dry. I identify that paper bag as the one I picked up, because the one I picked up was a heavy brown paper bag, what is ordinarily used around hardware stores for nails and stuff like that. This bag resembles the one I picked up and I would say it is the same one. It looks like the same one and I would say it is. It is not a common paper bag, it is an extra heavy bag. The square paper with fuse written on it was there also. It was either on the sandbar or on the bank. Stanrich picked it up—that was on the sandbar. I would say the sandbar is around 15 feet wide, I don't know exactly, and about 50 or 60 feet long. I would think the river is something like 100 feet wide at that point and the sandbar is along about the middle and is about 15 feet wide. The bridge is approximately 30 feet above the river.

(This witness was then excused.)

The witness, J. A. ROACH, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is J. A. Roach; I am a Special Agent of the Federal Bureau of Investigation, and am now stationed at Chattanooga, Tennessee. I came here New Years' day last year, 1940. Before that I was stationed at Huntington, West Virginia, and have been with the Federal Bureau of Investigation since July, 1936. I am a graduate of the University of Buffalo Law College. On March 31, 1940, I was in Knoxville, Tennessee, and about that date we received a complaint as to the dynamiting of the Tennessee Valley Authority power lines from the Tennessee Valley Authority. As a result of the complaint Mr. R. T. Mann and myself proceeded to Copperhill for the purpose of conducting an official investigation into it and we did make such an investigation.

This fuse which you have handed me is marked Exhibit No. 2. This was found by Special Agent Mann and myself in the Hot House Creek Section of Georgia, near McKaysville at a TVA tower that had been dynamited and destroyed. It is dynamite fuse, crescent fuse; we found it on the 17th day of April, 1940. It was lying along on the ground leading to the particular post or posts of the dynamited tower. This particular tower was a wood tower. The post was similar to the ordinary telephone poles, about that big around. At the time we got there these two stumps of these two poles that had been dynamited, and, of course, when the explosions took place the poles were blown to pieces. I will file the fuse as Exhibit No. 1 to my testimony. It has been in the pos-

session of the FBI files continuously since the time it was picked up.

Since I found the fuse I sent it to the technical laboratories in Washington and put a tag on it. The tag was still on it when I received it back.

The fuse which you have passed to me is fuse marked Knoxville Exhibit No. 1; it is dynamite fuse which Agent Mann and I found at the scene of the TVA tower that had been dynamited in the Grassy Creek Section near Copperhill, Tennessee, a wooden pole. At this particular dynamiting four wooden structures were dynamited and this is part of the fuse we found there. That was also sent to Washington to the technical laboratories and when we received it back it was in the same condition as when we sent it off. I will file that as Exhibit No. 2 to my testimony.

The fuse which you have just handed me is marked Knoxville Exhibit No. 3 and is fuse that was found by Agent Mann and myself at a dynamiting that occurred in Polk County, Tennessee, just off the water level highway, near Copperhill. This was found at the scene of a TVA dynamiting of a steel structure tower, one of those large four-legged affairs you see on the highway. At this particular dynamiting the tower was lying down and there were huge holes blown at the base of each leg of the tower. We found this fuse on the 17th day of April, 1940. I will file this fuse as Exhibit No. 3 to my testimony.

The fuse that you have just passed to me likewise was found by Agent Mann and myself, marked Knoxville Exhibit No. 4. This fuse was found in what is known

as the Hot House Creek Section near McKaysville, at the scene of a dynamiting of a TVA steel structure tower. When we arrived at the scene of this particular dynamiting the tower had not been totally destroyed. There were huge holes at the base of three legs of this tower and the tower was leaning to one side but was held up by one leg. There was no hole at the one leg still holding. The fuse was running from three of those legs. There was no indication that the fuse had been run to the leg that was holding. I will file that as Exhibit No. 4 to my testimony.

I went into Copperhill, in Polk County, Tennessee, and Fannin County, Georgia, on this investigation on the 17th day of April, 1940, and left there on the 30th day of April, 1940. I have been back there several times for three or four days at a time. We talked to people who were suspicioned of having had a part in the dynamiting. The first individual I talked to was Clyde Huffman. He was interviewed at McCays, Georgia, and was in custody of Fannin County. Following that I talked to Ed Simonds, Earl Hubbard and Woodward.

At a subsequent date I obtained a statement from Edward Simonds.

(At this point counsel for defendants moved the Court to exclude the jury and go into the matter of whether or not the statements were obtained freely and voluntarily and without fear or hope of reward.)

(The Court sustained the motion and excluded the jury from the Court Room in order to hear testimony on this question.)

The Court: All right, proceed with your preliminary examination.

Examination by Mr. Baker.

Q. Mr. Roach, who did you take statements from? A. The only written statement I took was from John Edward Simonds on the 28th of April, 1940.

Q. 20th of April? A. 28th.

The Court: Just a minute. You talked to Clyde Huffman, Edward Simonds, Felton Woodward and who else?

The Witness: Earl Hubbard. I might state I obtained a verbal confession from Hubbard and Woodward on the 28th, although they were not reduced to writing at that time.

Q. And they were reduced to writing by some one else? A. On the 29th I believe.

Q. The only written statement you took was from Edward Simonds? A. That is correct.

Q. You first went into the Copper Basin you say on what date? A. I went into the Copper Basin April 16th.

Q. 16th of April? A. Yes, sir.

Q. You were at that time engaged in an investigation for the FBI? A. That is right.

Q. What other agents were there with you? A. Special Agent R. T. Mann.

Q. Now, at some subsequent date did other agents come in? A. Yes, sir.

Q. On what date did they come there? A. On the 24th of April—the night of the 24th of April, H. E.

Plaxico, who was then in charge of the Knoxville Division came in, and thereafter several other agents came in.

Q. Will you give the names of those other agents? A. Yes. Following that E. M. Heavrin came in—he was stationed at that time here in Chattanooga. Then R. L. Morgan and N. H. McCabe came in from the Charlotte Division, and John E. Lunsford came in from the Atlanta Division, and Charles Whitten came in from the Birmingham Division.

Q. Who else came in? A. That is all the agents we had in there.

Q. A total of how many? A. Well, there was Mann, Plaxico, Heavrin and myself from the Knoxville Division—four; Lunsford from Atlanta was five, Whitten from Birmingham, six, McCabe and Morgan from the Charlotte Division.

Q. Eight altogether? A. Yes.

Q. What time did Mr. Plaxico come in? A. On the night of the 24th to the best of my recollection. Now, I believe after the last dynamiting—that was the morning of the 24th, and I called him immediately after the dynamiting occurred—he came in that night, the 24th, I am positive.

Q. Now, did you have an organization meeting when all the agents got there? A. Yes, sir.

Q. Where was that meeting held? A. In the New York Hotel.

Q. On what date was it held? A. I would say it was on the 25th.

Q. 25th? A. Yes, sir.

Q. Who was present outside of the agents at that time? A. B. E. Biggs, Sheriff of Polk County.

Q. Sheriff Biggs was there? A. That is right, and I believe Roxie, his Chief Deputy was there.

Q. You didn't know these various people yourself, did you Mr. Roche? A. No, sir, never had been to Copperhill before.

Q. And at this organization meeting you told Mr. Biggs to take into custody the ones he thought should be questioned? A. No, at that meeting I didn't know who was to be questioned.

Q. Well, you told Mr. Biggs to get the ones that he thought you ought to examine? A. No, not at that time—we went over a list of individuals that we thought might possibly be implicated.

Q. And you instructed Mr. Biggs to make those men available to you do you could examine them? A. No, no such instructions were issued at that time, Mr. Baker.

Q. Well, were they issued at any time? A. Yes, after the complaint was filed I instructed Mr. Biggs to pick up five or six individuals.

Q. Pick up who? A. Five or six individuals.

Q. The complaint was not filed for several days after that? A. The complaint was filed on the 29th of April.

Q. That is correct. How were you to talk to these men—how did you know who to talk to? A. We didn't know who to talk to.

Q. Well, where did you find the men to talk to? A. At the YMCA building.

Q. How did they get to the YMCA building? A. I don't know.

Q. Who brought them there? A. I don't know that either—I suppose the Sheriff or his deputies.

Q. You suppose the Sheriff ordered them there? A. Or his deputies brought them there.

Q. Well, they were in custody of the YMCA building? A. That is correct.

Q. They were in substance and in fact in jail, that is what it amounted to?

Mr. Badgett: Well, that calls for a conclusion.

The Court: Yes.

Q. Well, could they leave the jail? A. I never talked to anybody that was in jail.

Q. Well, could they leave the YMCA building? A. As far as I was concerned they could.

Q. But they were available for you to talk to any time you wanted to talk to them at the YMCA building? A. That is correct.

Q. And there were guards and deputy sheriffs stationed all around that YMCA building? A. What do you mean "stationed around?"

Q. Well, they were all around there? A. They live there.

Q. They live there? A. That is right.

Q. How many of them live there? A. I don't know that.

Q. How many armed deputy sheriffs were there? A. Quite a few.

Q. Probably twenty-five or thirty? A. Well, I would say eighteen or twenty.

Q. Ten to twenty? A. Eighteen to twenty.

Q. Eighteen to twenty armed deputy sheriffs stationed in that building? A. That is right.

Q. When you saw these men they were in the custody of those deputy sheriffs over there? A. That is right.

Q. You had talked to Ed Simonds once before, hadn't you? A. That is correct.

Q. You first talked to him when? A. I first talked to Ed Simonds on the afternoon of April 25th.

Q. Afternoon of April 25th? A. That is right.

Q. You know when he was taken into custody? A. No, I don't.

Q. You know where he was when he was first taken into custody? A. No, I don't. The first time I—

Q. Where was he when you talked to him? A. The first time I saw Simonds was at the YMCA building.

Q. You know how he got to the YMCA? A. I do not.

Q. Did you tell anybody you wanted to talk to Ed Simonds? A. I did not—never heard of Ed Simonds.

Q. You never heard of him? A. No.

Q. But for some strange reason he appeared at the YMCA building, so you could talk to him? A. I wouldn't say it was a strange reason.

Q. Well, who had him in custody? A. The Sheriff of Polk County.

Q. Well, did you tell the Sheriff of Polk County you wanted to talk to Ed Simonds? A. No, I did not.

Q. He brought him there so you could talk to him? A. As I understand it the Sheriff of Polk County ar-

rested him on a charge of the State—arrested quite a few of them, and asked us to interview them in reference to various dynamiting.

Q. This YMCA building you are talking about is a building owned and controlled by the Tennessee Company isn't it? A. I don't know anything about that.

Q. And used by the Tennessee Copper Company to house these special guards, as you say, eighteen or twenty of them? A. Well, the YMCA building was used by the Sheriff as his headquarters.

Q. You knew these eighteen or twenty men were special guards? A. Yes, I knew they were.

Q. They were there and were in substance and in fact employees of the Copper Company? A. I didn't know whether they were employees of the Copper Company or whose employees—they were deputy sheriffs.

Q. You thought they were deputy sheriffs? A. That is correct.

Q. Now, are you sure it was the 25th when you first questioned Ed Simonds? A. Yes, sir.

Q. It wasn't on the afternoon of the 24th? A. No, it was the 25th.

Q. You say it was on the afternoon of the 25th? A. Yes, sir.

Q. How long did you question him on the afternoon of the 25th? A. Questioned him for approximately two hours.

Q. Two hours? A. That is right.

Q. What time of day did you start questioning him? A. I would say about 2:00 o'clock.

Q. And you questioned him until about 4:00? A. That is right.

Q. What did you do with him when you got through questioning him? A. I left him right there at the YMCA.

Q. You know what happened to him afterwards? A. I do not.

Q. You know where the Sheriff took him? A. No.

Q. You know whether he had had anything to eat for twenty-four hours before that time? A. No, I was not interested in whether he had anything to eat.

Q. You didn't care whether he had anything to eat? A. That is right—he was not in my custody.

Q. When did you question him next? A. That evening.

Q. When—what time? A. Oh! 7:00 o'clock—right after dinner.

Q. Questioned him then for about three hours? A. I would say another two-hour period.

Q. From about 7:00 to 9:00? A. That is right.

Q. What happened to him when you got through with him then? A. He was still at the YMCA building when I left.

Q. You left him at the YMCA building? A. That is right.

Q. You know where he went after that? A. I do not.

Q. You know whether he had anything to eat that night? A. No, he didn't mention anything about having been hungry. I understood from the Sheriff they were fed the same food that the deputies were fed.

Q. Well, was he charged with anything there at the time you were there? A. Yes, as I understand it, he was charged with dynamiting on a State charge—destroying property.

Q. Did he tell you he wanted to see a lawyer? A. No, he did not.

Q. Did any of his family or his friends go into that YMCA building? A. I don't know, I wasn't there all the time.

Q. You know whether any other agents went in and questioned him after you got through with him on the night of the 25th? A. Not on the night of the 25th. Mr. Plaxico and I questioned him—I don't believe he had been questioned by any other agent except Mr. Mann and myself prior to that.

Q. After you questioned him until about 9:00 you know whether or not any other agent went in and questioned him? A. I know they did not. We had another conference after that and all the agents were present at the New York Hotel.

Q. You had another conference on the night of the 25th? A. That is right.

Q. Who was present at that conference? A. All the agents and Sheriff Biggs.

Q. Was Roxie Campbell there? A. I don't believe Roxie was at that one.

Q. Did you at that time, or any one of the agents, instruct the Sheriff to bring some more people in for you to question? A. No, we did not.

Q. Did you tell him to make some more people available for you to question? A. No, as I recall they had all we could handle right then.

Q. You know where Ed Simonds spent the night on the 25th or 24th? A. No, I don't.

Q. You know nothing about that? A. Not a thing.

Q. He was not your prisoner? A. That is right.

Q. When did you next see him? A. On Sunday afternoon, the 28th of April.

Q. Who had talked to him in the meantime? A. Nobody to my knowledge.

Q. Well, after you finished questioning him on the night of the 25th, didn't other agents question him? A. No, they did not. The other agents were dispatched out on other investigations. I know as a matter of fact they didn't question him for any protracted period of time.

Q. You don't know where the other agents were? A. I know where they went—I know where they were supposed to be.

Q. You finally questioned him again then on Sunday the 28th? A. That is correct.

Q. And then is when he made a statement to you? A. That is right.

Q. Who was present when that statement was made? A. Earl Hubbard, Mr. Plaxico and myself.

Q. You told him at that time if he would make a statement you would arrange bond for him, didn't you? A. No, I did not.

Q. Did not? A. I did not.

Q. Did Mr. Plaxico tell him that? A. No, sir.

Q. Anybody tell him that? A. No, sir.

Q. Did you tell him he would get thirty-five years if he didn't make a statement? A. I did not.

Q. You made no statement at all along that line? A. That is correct.

Q. Were you present when these men were committed to the Hamilton County jail? A. No, I was not.

Q. As a matter of fact you didn't know the recommendation was made that Ed Simonds be released on $1,000 bond and these others $3,000? A. There was a recommendation?

Q. Yes? A. I know nothing about that.

Q. And as a matter of fact bond for $1,000 was made out and sent to him to sign? A. That is the Commissioner's duty—I don't know anything about bonds. As I remember they were all placed under $3,000 bonds, weren't they?

Q. Well, I am asking you if you and Mr. Plaxico didn't— A. I am telling you we didn't.

Q. Didn't recommend to the Commissioner that these men be placed under $1,000? A. Made no such recommendation.

Q. You nor anybody else? A. I don't know.

Q. And nobody sent $1,000 bond to Ed Simonds? A. I don't have anything to do with bonds.

The Court: Where were you when this statement was made?

The Witness: In the YMCA Building.

The Court: Same building you were the first time?

The Witness: Yes, sir.

The Court: Under what circumstances did he come in to where you were when he made this statement?

The Witness: He was in there—it is in a bedroom.

The Court: Just how many were present?

The Witness: Just Earl Hubbard, Ed Simonds and Mr. Plaxico and myself.

Q. You know whether these parties, or Ed Simonds ever had a chance to see counsel or demanded a right to see counsel or not? A. No, I do not.

Q. I will ask you if you didn't leave orders at the Hamilton County jail, you and other agents, even after these men had been committed by the Commissioner, they were not to see counsel? A. I made no such order.

Q. You know whether anybody did? A. No, I do not. We didn't have any jurisdiction over the Hamilton County jail. After we file a complaint the individuals are in the custody of the Marshal.

Q. You know whether the Marshal made such request? A. I do not.

Q. Did you allow anybody to see these men while they were in the YMCA—Ed Simonds particularly? A. Did I let anybody see them?

Q. Yes, anybody? A. I sent for Mrs. Simonds at his request for the purpose of allowing her to see him.

Q. When was that? A. Sunday afternoon, I believe.

Q. That was after you had gotten the statement from him you sent for Mrs. Simonds, after you got the statement? A. That is correct—that is the only time he requested it.

Q. And Mrs. Simonds didn't know where he was until after he made the statement? A. Mrs. Simonds

certainly did know where he was; I talked to Mrs. Simonds prior to that time.

Q. Now, Mr. Roach, at all times when these men were in the custody of the YMCA, and the City jail and the County jail, and various other jails they were in up there, I will ask you if Mr. Plaxico and you, and other agents, or some of you, didn't give instructions to Sheriff Biggs and his deputies that no person was to see any of these men that were in custody?

Mr. Badgett: I object to that statement of counsel about various jails, etc.—let him ask his question so the witness can understand. He has made a statement and then asked a question. It is before the Court but it is in the record.

The Court: Just let him answer.

A. To my knowledge no such instructions were issued.

Q. Well, you know whether they were issued or not? A. That is an ambiguous question—I would say no.

Q. The only thing you can say is you didn't issue them? A. That is right.

Q. And you don't know whether other agents or Mr. Plaxico did or not? A. That is right.

Q. Right there, there are three jails in Copperhill, isn't there? A. No, two jails.

Q. Two jails and a private jail, the YMCA? A. If you want to call that a jail, yes.

Q. There is the City jail and the County jail and this private building, YMCA—three of them? A. That is right.

Q. These men were held in custody in each one of these three jails, were they not? A. As far as I know they were.

Q. And they were transferred back and forth from one jail to the other for days? A. No, I don't know anything about that.

Q. One day Ed Simonds would be in the City jail and the next day in the County jail and the next day in the YMCA? A. You will have to ask the sheriff about that. I never saw Ed Simonds other than in the YMCA building.

Mr. Baker: If your Honor please, I don't know whether we want to go into all these statements now or not—there are several statements involved—don't know whether your Honor wants to dispose of one at a time or not.

The Court: I want to dispose of all Mr. Roach is supposed to testify about. Might as well.

Mr. Baker: All right.

The Court: It has to be determined.

Q. Which other men did you talk to in reference to this matter? A. I obtained confessions from Earl Hubbard and Felton Woodward on the 28th of April.

Q. Where did you first see Earl Hubbard? A. At the YMCA building.

Q. When? A. 25th of April.

Q. What time of day? A. In the afternoon.

Q. What hour in the afternoon? A. I believe it was about 2:00, the same time that I saw Simonds. I believe Woodward, Simonds and Hubbard were all present in the room at the YMCA when I walked in.

Q. You talked to all of them together? A. No.

Q. Talked to them separately? A. That is right.

Q. You know when Earl Hubbard was taken into custody? A. No, I do not.

Q. You know who ordered him taken into custody? A. No, sir.

Q. But he was made available to you at any time you wanted to talk to him? A. That is right.

Q. Now, assuming, Mr. Roach, some of these men were not at the YMCA and somewhere at the City jail and you wanted to talk to them, who did you tell to get them for you? A. Sheriff Biggs.

Q. You told Sheriff Biggs, "I want to see Earl Hubbard" and he got him, is that correct? A. That is right.

Q. And told him that in reference to Ed Simonds? A. Told him that in reference to all the individuals he had in custody.

Q. In other words, he would go get those men and bring them to the YMCA, so you could talk to them? A. That is right.

Q. You don't know where he was keeping them? A. No, I don't know whether he was keeping them in the County jail—

Q. Or the City jail or somewhere else? A. That is right.

Q. You talked to Earl Hubbard about two hours on the 25th, the afternoon of the 25th? A. Correct.

Q. Now, when was the next time you talked to him? A. On the afternoon of the 28th.

Q. That is the 28th of April? A. Yes, sir.

Q. Who had talked to him in the meantime? A. I can't say definitely.

Q. You do know other agents examined him several times in the meantime? A. In all probability, yes.

Q. You know that they examined him for a long period of time? A. No, I know better than that—there was not any individual questioned for a period of over four hours at any time.

Q. Well, were you present when Earl Hubbard was questioned on Saturday morning? A. What date is that, the 27th?

Q. Let's see. That would be the 27th, that is correct. Were you present on the 27th when Earl Hubbard was questioned? A. No, I don't believe I was.

Q. You know what time they started questioning him? A. Who?

Q. Any agent of the FBI? A. No, I do not.

Q. You do not? A. No, sir.

Q. Did you see Earl Hubbard at any time on Saturday the 27th? A. Yes, I believe Mr. Plaxico and I interviewed him on Saturday afternoon, as I recall.

Q. You talked to him up there Saturday afternoon? A. That is right.

Q. What time Saturday afternoon? A. Well, that would be just a guess, probably 2:00 or 3:00 o'clock.

Q. Probably 2:00 or 3:00 o'clock? A. Yes, sir.

Q. Were you present when after this long examination— A. What long examination of him, Mr. Baker?

Q. Well, strike that out. Were you present during any examination of him when it was necessary that they

call a doctor to treat him? A. Yes, I was there on Sunday the 28th.

Q. That was when? A. Sunday, as I recall.

Q. Wasn't it late Saturday afternoon? A. Well, it could have been.

Q. Who called the doctor for him? A. I don't know. I know the information was conveyed to Sheriff Biggs that he had a cold.

Q. Who conveyed that information? A. I don't know, I believe Mr. Plaxico.

Q. At the time you were talking to him Saturday afternoon—you say you thought you did—did he have his glasses on? A. I believe he always had his glasses on when I talked to him.

Q. What sort of condition was he in when you talked to him Saturday afternoon? A. He had a cold, there is no doubt about that.

Q. He was sick, wasn't he? A. Well, no sicker than some of the individuals here in the Court room who have colds. He was probably sick at heart.

Q. You thought he was going to pass out on you and you called the doctor? A. No, was no question about him passing out, Mr. Baker.

Q. Mr. Roach, do you know how much Ed Simonds weighed on the 25th of April when you first talked to him? A. I could refer to my first report and tell you what he weighed.

Q. On the 25th of April? A. Yes, sir.

Q. Does your report show what he weighed on the 24th of April? A. Well, no, we don't keep track of how

much they weigh each day. There would be a description of him in there with his weight.

Q. Did you weigh him on the 25th? A. No.

Q. What was your impression about how much he weighed when you first talked to him? A. Well, he was a pretty husky boy, I would say he weighed a hundred and sixty pounds at that time—short, stocky.

Q. How much did he weigh when you got through questioning him? A. I don't have any idea—I imagine a hundred and sixty.

Q. As a matter of fact, don't you know he had lost thirty-five pounds in four days? A. Mr. Baker, that is absurd.

Q. That is absurd? A. Yes, sir.

Q. Did you ever tell any of these men, Hubbard or Simonds that they were lying to you when you were talking to them? A. No, I did not.

Q. How is that? A. I did not. I often tell them their story don't coincide with the alibi they have furnished. For example, Ed Simonds furnished information he was with his wife on certain days and nights, and when we went and talked to Mrs. Simonds she said that was not so and we would come back and tell Simonds that.

Q. You came back and told Simonds he had lied to you? A. Told him one was lying, he or his wife.

Q. You told him almost continuously you knew what the truth was didn't you? A. Well, we didn't know all the truth.

Q. Well, you told Hubbard and Simonds you knew what the truth was? A. In reference to what?

Q. In reference to anything about this case? A. Well, we still don't know the truth about the entire case.

Q. But you told them you knew what the truth was? A. Well, be more specific than in reference to anything in this entire case.

Q. Well, if Ed Simonds made a statement to you and it didn't sound right to you, didn't you tell him "that is not so, Ed, I know what the truth is?" A. I don't recall saying just exactly that.

Q. Well, what would you say to him under those circumstances? A. Well, I would probably say, "Now Ed, it does not fit into the facts we have developed so far—what the others have told us."

Q. And that is not what the facts are? A. Well, we know what the facts are that somebody else has furnished us.

Q. Well now, in the course of these various interviews, and interviews with these defendants, Mr. Roach, wasn't it customary for two agents to talk to a man for a while—for instance, say, Earl Hubbard, and then let him rest a little while and then more agents talk to him? A. No, that is not very good policy of investigation technique, because all the things you have gained in the first two hours is lost if you change agents.

Q. I am not asking about the policy or technique, I am asking if that was done? A. That was not done.

Q. Can you give the names of the various agents that talked to Earl Hubbard? A. No, I cannot.

Q. How is that? A. No, I cannot.

Q. You know there were more of them talked to him than you? A. That is correct.

Q. You know whether there was six or eight of them talked to him? A. I know there was not eight and I know there was not six—there were perhaps two or three agents talked to him.

Q. And talked to him at different times? A. That is correct. We had a lot of people investigated down there, Mr. Baker.

Q. What I am getting at one man would interview him for a while and then some other agent would interview him? A. You mean for any protracted period?

Q. Well, protracted period or any period? A. No, I don't believe that is quite true. We may have interviewed Ed Simonds or Earl Hubbard, or any individual, for a couple of hours, in the morning, and then in the afternoon some one else might have been talking to another man and got some information in reference to Simonds and Hubbard and then we would go in and interview Hubbard or Simonds and find out what they said.

Q. That is right? A. But the inference you are trying to leave is not correct.

Q. I am not trying to leave any inference at all, I am just trying to find out the facts, did you ever curse any of these defendants? A. Did not.

Q. Did you ever use the word "damn liar?" A. No, sir.

Q. Never used that language at all? A. Never used it in this case or any other case.

Q. Or any other case? A. That is right.

Q. Did these men know what they were charged with at any time you were examining them up there? A. I don't know—that was the Sheriff's obligation.

Q. You took the position they were the Sheriff's prisoners and his obligation? A. That is correct.

Q. And the Sheriff was merely your agent in making them available for you to talk to? A. The Sheriff was merely cooperating with us and we were cooperating with the Sheriff.

Q. You were cooperating with the Sheriff? A. That is right.

Q. Did you talk to Felton Woodward? A. Yes, sir.

Q. When did you talk to Felton? A. Talked to Felton the first time on the 25th of April.

Q. 25th of April? A. Yes, sir.

Q. What time? A. During the afternoon.

Q. How long did you talk to him? A. About two hours.

Q. When did you next talk to him? A. I next talked to him on the evening of April 28th.

Q. April what? A. 28th, Sunday evening.

Q. You only talked to him on two occasions? A. That is right.

Q. You know that other agents talked to him between the 25th and 28th? A. I don't believe anybody talked to him between that time. I know he was talked to on the 29th by McCabe, Heavrin and Agent Mann.

Q. When did they get a statement from him, you know? A. He verbally confessed on April 28th. The statement was reduced to writing on the 29th.

Q. He was so sick at that time, on the 28th, he could not make a statement and had to go to bed? A. Felton Woodward was not sick at all. The only sign of anybody being sick was Earl Hubbard.

Q. And Felton said he was so tired and sick he couldn't make any statement then and had to go to bed? A. No, that is not correct. Felton Woodward, Earl Hubbard and Ed Simonds asked if they could be placed together that night so they could collaborate.

Q. Where did you place them? A. I believe they requested we put them back in the City jail but we thought they had better stay in the YMCA jail.

Q. You did keep them at the YMCA building didn't you? A. I don't know where they finally ended up—we called Sheriff Biggs and asked him to make arrangements to let them stay together, all three of them.

Q. Stay together and give them something to eat? A. Give them something to eat?

Q. Yes? A. No, that was 8:00 or 9:00 o'clock at night when we left them—they had already eaten.

Q. Where did they eat? A. Well, I don't know where they ate, I suppose at the YMCA. I do know this, that when they left they were in a very affable state of mind, and—

Mr. Townsend: That is a conclusion and we object to it.

The Court: I think he can answer that. Go ahead.

A. And they commented upon the fact that they had been treated very well and had very good food. I know as a matter of fact they were furnished the same food the deputy sheriffs ate there, and they had a big kitchen and a big fat jolly cook and he could certainly cook some meals.

Q. Did you ever see one of them eat a bit of food? A. No, I didn't see them eat. I saw them send up food.

Q. And you don't know what they ate? A. Of course, that is just what the Sheriff told me.

Q. That is what the Sheriff told you—they had plenty to eat? A. And they told me that themselves and I saw no reason for questioning.

Q. As a matter of fact, the first meal they had was after you got through with that Sunday session, was it not—that right? A. Well, I don't know—I never saw them eat even after Sunday.

Q. You had no part in the examination of Ben Cross? A. No.

Q. You don't know anything about that? A. No, didn't talk to Ben.

Q. Are the only men you examined Ed Simonds, Earl Hubbard and Felton Woodward? A. That is the only three I examined that gave any information concerning their implication in this case.

Q. Were you present at the time Cross was examined? A. No.

Q. Well, now, after three or four days each one of these defendants denied and insisted they were not guilty of anything, did they not, Mr. Roach? A. Which three or four.

Q. Well, from the 25th to the 28th, they all insisted they were not guilty? A. Yes, all that we talked to.

Q. Well, Woodward and Simonds and Hubbard? A. And Clyde and Clint Huffman.

Q. Those were the five you talked to? A. And John McGhee.

Q. You didn't get a statement from John McGhee or the Huffman boys? A. No.

Q. And up until Sunday night or Sunday afternoon Simonds and Hubbard and Woodward all said they were not guilty? A. That is correct.

Q. And insisted on it? A. That is true.

Q. Is that the only five men you talked to, Mr. Roach? A. No, talked to M. C. Anderson.

Q. Well, did you get any statement from him? A. No.

Q. Did you ever talk to any other outside of the ones you have named? A. Let's see. Clint and Clyde—I probably did, but it was only fifteen or twenty minutes. I wouldn't call it really an interview.

Q. Did you talk to Queen or Rhodes or Ballew? A. No.

Q. Talk to the Green boys? A. No.

Q. Marion Ellis? A. Yes, I talked to Marion Ellis for about five minutes at the YMCA building, but the interview itself was carried on by other agents.

Q. Martin Simonds? A. No, I didn't talk to Martin.

Q. Wayne Henry? A. No, sir.

Q. Meggs Collins? A. No, I don't believe so.

Q. Rans Smith? A. No, sir.

Q. Sweat Woodward? A. Yes, I took a statement from Sweat.

Q. Where was that statement taken? A. At the YMCA building.

Q. On what date? A. 30th of April.

Q. When was he taken into custody, do you know? A. He was taken into custody after the return of the indictment here on the 14th.

Q. I know but was he in custody of the YMCA when you talked to him? A. No, he was not.

Q. How did he happen to go to the YMCA? A. I don't know—one of the deputy sheriffs brought him there I guess.

Q. Did you send for him? A. No, sir.

Q. You didn't send for him? A. No.

Q. You never sent for any of these men, did you, Mr. Roach? A. No, I never sent for anybody specifically.

Q. You told Sheriff Biggs to bring the men over that you thought might be implicated so you could talk to them? A. That is not the way that occurred, Mr. Baker. The Sheriff was investigating as a State officer and we were investigating as Federal men. We have no control over the Sheriff. If he wanted to arrest anybody or pick anybody up that is his business. He had twenty-five or thirty people in custody down there indicted. They were involved in this matter—it was only natural we go over there and examine them.

Q. You questioned only the ones he had in custody? A. Absolutely.

Q. He agreed he would make them available to you? A. Well, he said they were all there if we wanted to question them.

Mr. Baker: That is all.

Q. Mr. Roach, you went into the Copper Basin on the 16th, I believe you said? A. That is right, on the night of the 16th.

Q. From then on until April 25th you had been working on this case had you not? A. That is right.

Q. You had been talking with Sheriff Biggs and his deputies had you not? A. That is right.

Q. And you had discussed with him the men you thought might be guilty of this offense? A. That is right.

Q. In these various discussions you had told him to pick these men up and place them in arrest on some sort of charge so you could examine them? A. No.

Q. What did you talk with him about that? A. We didn't tell him anything about that.

Q. He told you the men he thought were guilty did he not, or the men he suspicioned? A. Yes, probably 80 or 90.

Q. And during these various conversations with him and your cooperating with him in every way these men were taken into custody were they not, some of these 80 or 90? A. Yes, after the information was furnished to us by Freed Long, furnished to Sheriff Biggs first and then to us, we made arrangements to interview Long and took quite a detailed statement from him and the Sheriff said he was going to lock up everybody Long had mentioned.

Q. And they were locked up? A. That is correct.

Q. And you sent for them and started to examine them? A. I went to them at the YMCA building.

Q. After a conference with the Sheriff and Freed Long the Sheriff said he would lock them all up? A. That is right.

Q. And you agreed to that? A. We had no control over the sheriff.

Q. You wanted them available so you could talk with them? A. They were all strangers to us.

Cross Examination by Mr. Badgett.

X. When was the first defendant taken into Federal custody? A. The first defendant was taken into Federal custody on the 30th of April.

X. That was after these statements were taken? A. Yes, sir.

X. Explain to the Court the method you used in taking these confessions, the men and who they were? A. In all instances and these instances particularly we identify ourselves, name and an officer connected with the Government; tell them what has been done and what we have in mind and what we are going to question them about and tell them they don't have to talk to us unless they agreed to and in each and every instance in this case they insisted they were innocent of any charge or any implication in the enterprise and were anxious to discuss their movements and whereabouts during the period covered.

X. And would make a statement to you about it? A. That is correct.

X. And did you check the statements? A. Yes, sir, we check the statements in all instances and one said he had been out in a ramp pit at one time and Simonds said he was at home in bed and knew nothing about it and we checked up on the alibis and contact the people they said they were with at this particular time and upon questioning most of the individuals we would find they weren't there and we would go back and told them at that time we were checking everything they said and would go back and tell what some people told us and that they did not corroborate their statements and their

whereabouts and in other words they finally admitted they had been lying in the first instance.

X. Admitted it when they were confronted with the other people's statements? A. That is correct.

X. Did you ever browbeat or intimidate them? A. Absolutely not, we never put a finger on anybody.

X. Did anybody in your presence? A. No, sir.

X. Did anybody to your knowledge? A. No, sir, that is strictly in violation of the rules and regulations of the FBI.

X. The Sheriff or any of his deputies didn't? A. No, sir.

X. The Sheriff first gave you the name of 80 or 90 of the men he thought were suspicious? A. Yes.

X. Can you tell how he arrived at that? A. No, I can't. He had a long list and we went over it with him of all the men out on strike that were familiar with the use and handling of dynamite.

X. And this 80 or 90 were of that class? A. Yes, sir, trammers and miners, all in the class known to handle dynamite.

X. You stated one of the men gave a verbal statement first, which one was that? A. Earl Hubbard.

X. In whose presence was that statement given? A. His and in the presence of John Edward Simonds and Mr. Plaxico and myself.

X. When Hubbard gave his statement what did Simonds say, if anything? A. Thereafter Simonds said bring in Felton Woodward, that he knew more about it than anybody and he wanted us to bring Woodward in in

his presence so he could tell Woodward he and Hubbard had confessed.

X. Did you do that? A. Yes.

X. You didn't have anything in writing, did you? A. Just the statement of John Edward Simonds.

X. Didn't have Earl Hubbard's? A. No, sir.

X. And Felton Woodward's? A. No, sir.

X. When he was brought in what did he state? A. They fell all over each other trying to tell what they did and they corroborated each other and told what they did, when, where and how, and we all had quite a session there for an hour and a half and the entire plot was laid open.

X. Did each one of the men talk to each other about the part they had to do with it? A. Yes, sir.

X. Did they tell each other not to respond to your questions? A. They corroborated and corrected each other and there was no evasion of our questions whatsoever, once they got started they kept on talking.

X. What did they say about giving a written statement? A. They wanted to get together and spend the night together and would furnish a written statement in the morning and we contacted the Sheriff and asked if such arrangement could be made and he said yes.

X. And the written statements were taken the next morning? A. Yes, sir.

X. From who? A. Felton Woodward and Earl Hubbard.

X. Were you present when they were taken? A. No, sir, Mr. Mann was there when they confessed and he took the written statement from Felton Woodward in

view of the fact Woodward had much more detailed information about all the activities.

X. Have you seen Felton Woodward's statement since then? A. Yes, sir.

X. I will ask you to state whether or not he said verbally what he stated in the written statement? A. Substantially so.

X. And did the others do the same? A. Yes, sir.

X. Did any of them tell you they were hungry and wanted food? A. It was never mentioned.

X. Or water? A. No, sir, in fact all three of them, Simonds, Hubbard and Woodward said they appreciated the way it was handled and they mentioned the fact that they hadn't had such food since they came out on strike.

X. Said they hadn't had such food since they came out on strike? A. That is correct.

Re-Direct Examination by Mr. Baker.

RQ. You told Sheriff Biggs you wanted all three together? A. That is correct.

RQ. And he said that could be easily arranged, didn't he? A. I don't know about the "easily," he said he could arrange it.

RQ. That was arranged and you spent the night at the YMCA? A. I don't know whether they did or not, we left and went back to the New York Hotel and we questioned them in the room in the presence of Biggs and his deputies.

RQ. At the time you were questioning these men, I will ask if there wasn't a continuous stream of company deputies or special deputies coming back and forth through

the room where you had them? A. Absolutely not. I wouldn't permit that. When I am going to interview a man I don't want any interruption.

RQ. The door was open? A. No, sir.

RQ. It was a private room in the YMCA? A. Yes, sir.

RQ. Did you question them on the first or second floor? A. First floor.

RQ. How many rooms has the first floor? A. One large room as you enter the YMCA. Two offices on the left, one has been converted into a bed room for guards and the next office is used by Broughton Biggs as his office and in the back is a small room, locker room and I believe another room on the right some place but I was never in that.

RQ. Which room did you use in questioning the men? A. The room immediately to the left as you enter the YMCA building, the office that had been converted into a bed room.

RQ. What sort of equipment is in that room? A. What do you mean?

RQ. Furniture and chairs? A. Two beds, army cots, and four or five straight chairs.

RQ. What kind of chairs were they? A. Ordinary, what you might term kitchen chairs.

RQ. Straight chairs? A. Yes, sir.

RQ. Hard bottom straight chairs? A. Hard bottom straight chairs.

RQ. Was that the office and room where all the men were examined or were some examined in other rooms? A. Which men?

RQ. Simonds and Woodward and Hubbard? A. All three in that room.

RQ. At all times when they were questioned they were questioned in that particular room? A. Yes, sir.

Re-Cross Examination by Mr. Badgett.

RX. Were they the same kind of chairs you were sitting in? A. That is correct.

RX. They were the only kind in the room, weren't they? A. That is right.

(This witness was then excused.)

The witness, DR. H. P. HYDE, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

Q. You are Dr. H. P. Hyde? A. Yes, sir.

Q. Are you a regularly licensed, practicing physician, Doctor? A. I am.

Q. How long have you been practicing? A. Ever since 1912.

Q. I will ask you if back sometime last April you went to what is known as the YMCA building to treat Earl Hubbard? A. I did.

Q. Do you remember the date? A. I do not remember the date.

Q. Was it the latter part of the month? A. I just don't remember.

Q. What was Hubbard's condition when you got there? A. Well, when I went in he was in the room laying on a cot and he told me he had a cold, suffering from a cold and I taken his temperature and it was normal

and examined his chest and his pulse and he seemed to be depressed and sick and I gave him some capsules for his cold and advised him to get a laxative for his bowels. He gave me a history of that.

Q. Did he seem to be nervous, Doctor, and tired? A. Well, he was laying there, relaxed, seemed to be depressed.

Cross Examination by Mr. Badgett.

X. He seemed to be depressed? A. Yes, sir.

X. How was he physically, did you examine him? A. I did, he seemed to have some cold.

X. Just an ordinary cold? A. Yes, sir.

X. It wasn't flu, was it? A. No, sir.

Mr. Baker: What medicine did you give, a sedative?

A. Acetic Salicylic acid, Dovers Powders, and phenacitine and codine, used for cold.

Mr. Badgett: Do you know who called you, Doctor?

A. The Sheriff called, Broughton Biggs.

X. Dovers Powders isn't a narcotic is it? A. Yes, sir, but those capsules didn't contain enough to come under the Narcotic Law though.

The Court: Is that your regular cold remedy?

A. That is what we usually give for common colds.

Q. Was there any lung involvement? A. He had some in his lungs, yes, sir.

Mr. Badgett: What kind of narcotic is that?

A. Dovers Powders is classed as a narcotic you know, have some opium in them but not enough, didn't have enough to come under the Narcotic Law.

X. What effect would they have on a normal man's mind? A. The amount I gave him it wouldn't affect his mind whatever.

Mr. Baker: There was some in the lung?

A. Yes, sir, he had a few rales through his chest.

The Court: Bronchial?

A. Yes, sir.

Mr. Baker: What condition was his heart in?

A. His heart seemed to be very good, I didn't notice anything abnormal.

Mr. Badgett: Did he tell you that anybody whipped him or browbeat him?

A. No, sir.

(This witness was then excused.)

The witness, EARL HUBBARD, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

Q. You are Earl Hubbard? A. Yes, sir.

Q. You were one of the strikers of the Tennessee Copper Company, Earl? A. Yes, sir, I am.

Q. Were you arrested back last April? A. Yes, sir, I was.

Q. I will ask you to state if that was on or about the 24th of April? A. Evening of the 24th, I believe.

Q. Who arrested you? A. Roxie Campbell and Bryor Crowe.

Q. Were you taken in arrest at that time and where? A. I was at home.

Q. Did anybody show you a warrant or anything? A. They did not.

Q. Did they tell you you were under arrest? A. No, they did not.

Q. What did they tell you? A. They told me they wanted to talk to me at the YMCA.

Q. Where did they take you to? A. The YMCA at Copperhill.

Q. Directly to the YMCA? A. Yes, sir.

Q. How long did you stay there at that particular time? A. Until I believe just after dark sometime.

Q. Where were you taken then? A. The County jail.

Q. When were you first questioned by agents of the FBI? A. The 25th I believe, the next day.

Q. Did you go by a Justice of the Peace or any official of any kind before you went to the YMCA? A. I did not.

Q. When you got to the YMCA building did some gentlemen of the FBI talk to you when you first got there? A. They did not.

Q. And they took you to the County Jail? A. Yes, sir.

Q. Did you spend the night there? A. I did.

Q. Was anybody in jail with you in the same cell with you? A. There was not.

Q. You said, I believe, you did not go before any justice of the peace at any time? A. No, sir, I did not.

Q. Now, you say they questioned you the next day? A. Yes, sir.

Q. What time of day was it? A. Between 11 and 12 that they questioned me.

Q. How long did they question you? A. Three or four hours.

Q. Do you know which ones of the agents were doing that questioning? A. No, sir.

Q. You don't know whether Mr. Roche was one of them or not? A. I believe Mr. Roche was there.

Q. How is that? A. I believe Mr. Roche was there.

Q. That was Thursday was it not? A. Yes, sir.

Q. Were you questioned any more Thursday? A. No, that was the only time.

Q. Not Thursday night? A. No, sir.

Q. Where did you spend Thursday night? A. In the YMCA.

Q. In a room in the YMCA after you had been questioned on Thursday? A. Yes, sir.

Q. Where did you sleep? A. Upstairs in a room on the second floor.

Q. Did you sleep in the same room occupied by a bunch of company guards? A. I did.

Q. Were they up and around you all night? A. They were, they were sleeping and one sat up and guarded.

Q. Was there a lot of noise going on all the time? A. There was.

Q. Did you get any sleep that night? A. I slept some.

Q. When were you next questioned? A. Friday morning.

Q. What time? A. Between eight and nine o'clock.

Q. For how long a period of time? A. Possibly two hours.

Q. Where were you taken when they finished with you that time? A. Kept in the YMCA.

Q. Were you questioned Friday afternoon? A. Yes, sir, I was.

Q. Where were you then? A. Still in the YMCA.

Q. How long were you questioned that time? A. Two or three or four hours.

Q. When they got through questioning you on that occasion where did they take you? A. To the City jail.

Q. Who was in the City jail when you got over there? A. I don't remember who all was there.

Q. Some of the other men involved in this were in there? A. I believe so.

Q. Do you know whether Felton Woodward—

Mr. Badgett: I object to the leading of the witness.

The Court: That is all right.

Mr. Baker: How many of you were in the cell at the City jail Friday night?

A. Four of us.

Q. How large is that cell Earl? A. It is about I would say 7 x 9.

Q. What sort of sleeping place was there to sleep in there? A. Just bunks against the wall.

Q. Were those bunks large enough for two men to lay down on? A. They are not.

Q. Four of you were in there Friday night? A. Yes, sir.

Q. Where did you sleep, Earl? A. I slept on the floor, they had a drunk in there with us.

Q. Did you have any cover there on the floor? A. Maybe a blanket.

Q. Was there any heat in the building you were in? A. Yes, sir, I believe there was.

Q. Were you taken out of the City jail Saturday morning? A. Yes, sir.

Q. Who came and got you? A. Some of the guards.

Q. Some of the company guards or deputy sheriffs? A. Yes, sir.

Q. Where did they take you to? A. Back to the YMCA.

Q. Did they take you on the first or second floor? A. The first floor.

Q. About what time of the morning was that? A. Around nine o'clock.

Q. How long were you questioned there on Saturday morning? A. I was questioned continuously from the time I went there until 4:30 or 5:00 in the afternoon.

Q. Was that questioning done by more than one agent? A. Two would come in and stay an hour or hour and a half and they would go out and two others would come in.

Q. Did that continue all the time? A. It did.

Q. While being questioned in that manner where were you seated? A. In a straight back chair at the side of the table.

Q. Do you have any trouble with your eyes? A. I do.

Q. Have to wear glasses all the time? A. Yes, sir.

Q. Did you get to wear your glasses during all that time? A. I did not.

Q. Did they take them off of you? A. Yes, sir.

Q. Who took them off? A. One of the FBI agents.

Q. You don't know which one? A. No, sir.

Q. Were you ordered to sit up straight in that chair? A. Yes, sir, and I was pushed up straight when I would lean towards the table.

Q. Were you sick? A. Yes, sir.

Q. All day? A. Yes, sir.

Q. Did you finally have some trouble late in the afternoon? A. I got awfully sick.

Q. Did somebody have to call a doctor for you? A. They did, yes, sir.

Q. Was that Dr. Hyde? A. Yes, sir.

Q. Who just testified here? A. Yes, sir.

Q. Did you ask for a doctor? A. I did.

Q. When did you first ask for a doctor that day? A. Sometime during the questioning Saturday.

Q. What time of the day did you first ask for a doctor? A. It seems that it was near noon.

Q. And finally got one at what time? A. Sometime after night, after dark.

Q. When you asked for a doctor at noon, did you get any response, did anybody say anything? A. No, sir, they did not.

Q. Did they tell you that you couldn't have a doctor? A. I think they gave me an aspirin and told me I didn't need a doctor.

Q. Did anybody call you a damn liar during all this examination? A. Yes, sir, they did continuously.

Q. Did anybody call you a damn liar? A. They did.

Q. Do you know who that was? A. One of the agents.

Q. Did anybody call you a damn liar and S. B.? A. I don't believe so.

Q. You were called a damn liar? A. I was.

Q. How many times? A. Several times.

Q. Was that an FBI man that called you a damn liar? A. It was.

Q. Did these various FBI men who examined you during that long session tell you they knew what the truth was about this transaction? A. They did.

Q. Did they tell you what the truth was, what they thought the truth was? A. They told me a lot of stuff. I don't remember.

Q. Did they tell you they knew what the truth was? A. Yes, sir, they said they knew what the truth was.

Q. I will ask you if when you would make a statement of some kind if they replied to you that they knew what the truth was and that you was a damn liar? A. That is right, yes, sir.

Q. Did you drink any of that coffee they had there at the City jail, Earl? A. I did try.

Q. Could you drink it? A. I did not, I tried some.

Q. Was something wrong with it? A. There seemed to be.

Q. Did it give you a headache after drinking it? A. I had a headache almost from the second day on.

Q. Can you describe to the Court the taste of that coffee you had? A. I can't.

Q. Did it taste like ordinary coffee does? A. It did not.

Q. Was there any peculiar color about it of any kind? A. I couldn't tell, it was creamed coffee and you wouldn't notice.

Q. Now, on the night you were over there at the City jail did you get anything to eat, Earl? A. I did not.

Q. Anything at all? A. No, sir.

Q. And didn't have any place to sleep except on the floor that night? A. That is right.

Q. Did you get any breakfast the next morning? A. I believe I had two dry sandwiches of some meat, bologna.

Q. And you couldn't drink the coffee? A. That is right.

Q. On Saturday at noon did you have anything to eat? A. I did not.

Q. Did you have any water to drink? A. I did not.

Q. From Saturday until the time you got sick? A. I did not.

Q. Did you ask for water? A. I did.

Q. Did anybody bring you any? A. No, sir.

Q. Did you ask for anything to eat? A. I don't believe I asked for anything to eat.

Q. Do you smoke, Earl? A. I do.

Q. Did you get to smoke a cigarette? A. No, sir.

Q. Did you ask for one? A. I started to roll one several times and they wouldn't let me roll it.

Q. Was any remark made to you during the course of this examination if you would go on and talk you could go out and get a nice meal? A. Yes, sir, and a drink of water.

Q. When was that? A. All during the examination.

Q. All during Saturday? A. Yes, sir.

Q. Was the statement made to you as to what would be done with you if you would talk, whether it would be light or what? A. Yes, sir, they would go and ask the Judge to be light on me.

Q. What was said about arranging bond for you? A. Said bond would be set at $1,000 and my father or anybody could sign it for me.

Mr. Badgett: I am making the same suggestion Mr. Baker made yesterday, he is using "they" and "those."

The Court: I think that is proper.

Mr. Baker: Do you know who said it Earl?

A. No, sir, I don't know the man.

Q. Was it an FBI man? A. Yes, sir.

Q. A man who identified himself as an agent of the FBI? A. It was, yes, sir.

Q. Did you know the names of the men, or remember the names of the men who questioned you? A. I do not.

Q. Did you ask for a lawyer any time during all this investigation? A. I did.

Q. Did anybody offer to call you a lawyer? A. They told me there was no charges against me and I didn't need a lawyer.

Mr. Badgett: Who is they?

The Witness: The FBI.

Mr. Baker: Do you know their names?

A. Mr. Plaxico, I believe.

Q. Did your family know where you were, do you know? A. They didn't know where I was at.

Q. From the time you were taken in custody on April 24th until the time you were put in the Hamilton County jail up here on April 30th I believe it was, did you see a single living soul outside of an Agent of the Federal Bureau of Investigation or a Deputy Sheriff? A. To talk to you mean?

Q. To talk to or close enough to talk to except Dr. Hyde? A. Nobody from the outside.

Q. Nobody from the outside ever came around the YMCA while you were being questioned? A. They did not.

Q. During the course of these various investigations, Earl, did these deputy sheriffs continuously circulate around over the building? A. When the door was open they did.

Q. Would they look in at you? A. Yes, sir.

Q. Laugh at you? A. They were always laughing at us.

Q. Sneer at you? A. Yes, sir.

Q. Did you lose any weight while this was going on, Earl? A. Around 20 pounds.

Q. In that four days? A. Yes, sir.

Q. How much did you weigh before you were put in jail? A. Ordinarily 185 to 187.

Q. How much did you weigh when you got to Hamilton County? A. I believe 167.

Q. Lose about 20 pounds? A. Yes, sir.

Q. This statement that you signed, Earl, did you write that statement? A. I did not.

Q. Did you tell anybody what was in it? A. I did not.

Cross Examination by Mr. Badgett.

X. You didn't read the statement? A. How is that?

X. You say you didn't write the statement? A. No, sir.

X. And you didn't sign one? A. I did sign a statement but I didn't write one.

X. But you did sign it? A. Yes, sir.

X. That is your signature there on each page isn't it? A. That is my signature, yes, sir.

X. Made in the presence of J. E. Lunsford and Mr. Whitten? A. He was there, yes, sir.

X. You were born in Polk County? A. Yes, sir.

X. On October 5, 1907? A. I am 34 years old.

X. Your wife's name is Pearl? A. Yes, sir.

X. Her married name was Pearl Stephens? A. Yes, sir.

X. And you have four children? A. Yes, sir.

Mr. Baker: I don't think this is the proper time to go into the truth of the statement.

The Court: It wouldn't be competent to go into the statement now.

Mr. Badgett: It has some bearing on whether or not it was voluntary.

Mr. Baker: It doesn't make any difference under this if it wasn't voluntary.

The Court: I don't see where that would shed any light on it.

Mr. Badgett: This is Mr. Roche?

A. I know him.

X. You know he is with the FBI? A. Yes, sir.

X. Which one of these men sitting here (indicating eight men of the FBI who had been called in the court room and placed in the jury box), was it that hit you in the YMCA at night? Or guarded you? A. None of them guarded me.

X. Where are the men that guarded you? A. The men that guarded me were deputy sheriffs.

X. Who were they? A. I don't know, I don't remember.

X. You live in Polk County? A. Yes, sir.

X. Which one of these men did you ask to give you a cigarette and who knocked it out of your hand? A. That one there told me I couldn't smoke.

X. The one with the glasses on? A. Yes, sir (Indicating Mr. Plaxico).

X. Which one of these men was it pushed you up straight in your seat? A. I believe this one here.

X. State what you know, which one it is, do you know which one it is? A. I am not positive.

X. Do you know whether any of them did? A. Yes, sir.

X. Which one looks like it? A. I am not sure of that. It looks like this one.

X. Which was that? A. The one on the end of the first row.

X. Did he question you? A. He did.

The Court: What is the Agent's name?

Mr. Badgett: Morgan.

X. Which one called you a God damn liar?

Mr. Thrasher: We object to that.

The Court: Yes, he didn't say that.

Mr. Badgett: Which one of them called you a damn liar?

A. Mr. Mann, I believe, the one with the brown suit.

X. You know him? A. Yes, sir, and the next one told me that I was lying, the one with glasses.

X. To Mann's right? A. Left.

X. Plaxico? A. Yes, sir.

X. Told you you were lying? A. Yes, sir.

X. Which one refused to get you water to drink? A. I don't remember which did that.

X. You don't remember which one of these men did that? A. No, sir.

X. That made no impression on your mind which one it was? A. So much happened I can't remember.

X. You didn't forget anything your lawyer asked you did you—

Mr. Baker: I don't want all these men in here as witnesses, listening to the testimony.

The Court: I think that is right.

Mr. Badgett: Which one of the men told you you could get a good meal if you would make a confession and tell all about it, that you would get out and could get a good meal? Why do you hesitate?

A. I was just trying to think which it was.

X. Didn't it make any impression on your mind at that time so that you can say now which one it was? A. I can't remember; they came in different interviews, talking to me.

X. You said one told you that, which one did? A. I believe that gentleman on the back row.

X. Don't state what you believe, do you know? A. No, I am not positive.

X. You think it was Mr. Whitten? A. I think he did.

X. You know him? A. Yes, sir.

X. Is he the man who took your statement? A. Yes, sir, he was the man in the room.

X. Who was it you asked for a lawyer and he said you couldn't have one? A. There were six of them in the room, Mr. Plaxico told me I was not charged with anything and didn't need a lawyer.

X. You asked him for a lawyer and he refused you? A. Yes, sir.

X. Who else? A. He was the only one told me that.

X. He was the only man you asked about a lawyer? A. Yes, sir.

X. Who told you if you would make a confession they would see that you got a bond? A. Plaxico told me he had been over and talked to my father and I had a good father.

X. Did any of these other men do anything to you, browbeat you or hit you? A. In what way?

X. Did anybody lay a hand on you? A. Nothing, except to push me up when I would lean over.

X. Who did you say did that? A. I thought it was the fellow on the end here.

At this point the eight FBI Agents were excluded from the Court Room.

X. You were questioned all day long by the FBI on Saturday? A. I was.

X. From what time? A. Around nine to four or five in the afternoon.

X. You didn't sign your statement on Saturday, did you? A. I did not.

X. You signed that statement on Sunday, didn't you, on Monday? A. Tuesday, I believe.

X. After you were questioned on Saturday, all day long? A. Yes, sir.

X. Which agents questioned you all day long? A. Two came in and stayed a while and they would go out and two more would come in.

X. They questioned you in shifts? A. Yes, sir.

X. Who told you to say that? A. No one.

X. Which two came in first? A. I don't remember which two.

X. Which two came in second? A. I don't remember.

X. Which two came in third? A. I don't remember.

X. Which two came in fourth? A. I don't remember.

X. Do you remember there was somebody there talking to you all day? A. Yes, sir.

X. Is that the day you were sick? A. Yes, sir.

X. You didn't make a confession then? A. I did not.

X. And on Tuesday you finally signed a statement? A. I signed the statement Tuesday.

X. Was it at your request that you went to the City jail and spent the night? A. I requested that I be taken to the City jail.

X. And stay on that cold floor at night without anything to eat and bad coffee to drink, and you made that request? A. Yes, sir.

X. And you made the request that you and Hubbard and Simonds be locked up together, didn't you, in the jail? A. I don't remember asking it.

X. Didn't they stay with you? A. Yes, sir, but I don't remember requesting that I be locked up with them.

X. You do remember that you requested that you be locked up in the city jail? A. Yes, sir.

X. In the old prison where you didn't have a bed or supper and you had to sleep on the floor. You don't know who guarded you? A. Where at, at the city jail?

X. At the YMCA? A. No, sir.

X. You slept in one of the beds the guards slept in up there, didn't you? At the YMCA, the instance you say you slept, didn't you sleep in one of the beds like they slept in? A. Yes, sir.

X. Didn't you eat there? A. Part of the time I did.

X. Who ever refused to give you anything to eat? A. Never refused to give me anything to eat. I didn't ask for it, on Saturday they told me I could get a nice meal and a drink of water when I would talk.

X. Plaxico is the one that told you that; what agent told you that? A. I didn't say which one.

X. Do you know? A. No, sir.

X. Do you know which one of the men who were sitting there it was? A. I thought it was the one sitting on the back on the right.

Re-Direct Examination by Mr. Baker.

RQ. Mr. Hubbard, you had been engaged in the strike up there with the company guards, with the Tennessee Copper Company, for a long time had you not? A. Since July of 1939.

RQ. I will ask you if the Company hadn't gotten in a great number of deputy sheriffs, some hundred or so? A. Yes, sir, a lot of them, I don't know how many.

RQ. A large number of them? A. Yes, sir.

RQ. And these deputy sheriffs were all quartered at the YMCA or a number of them? A. Part of them were.

RQ. Part were quartered at other places? A. Yes, sir.

RQ. These deputy sheriffs were strangers to you, were they not? A. Practically all were.

RQ. They didn't come from Polk County? A. If they did they came from out of the community where I lived.

RQ. You had never seen them before, most of them? A. No, sir.

RQ. Had these deputy sheriffs over a period of months up there intimidated you men and searched your houses and cars and so on? A. They had.

RQ. At all hours of the day and night? A. Yes, sir.

RQ. I will ask you if you didn't feel it preferable to be locked up in the city jail without a place to sleep than to be quartered with those guards you had been fighting so long? A. I wanted to be locked up in the city jail, yes, sir.

RQ. Do you know who owns the YMCA building? A. I do not.

RQ. Is it commonly understood up there that it belongs to the Tennessee Copper Company? A. Yes, sir, it is.

(This witness was then excused.)

The witness, JAMES H. ANDERSON, being first duly sworn, testified as follows:

Direct Eamination by Mr. Baker.

Q. You are James H. Anderson? A. Yes, sir.

Q. You are United States Commissioner for this district? A. Yes, sir.

Q. Judge Anderson, on what date did you commit these various defendants to the Hamilton County jail, do you recall? A. On April 30, 1940, a majority of them. Some of them were arrested a few days after that.

Q. Was that commitment hearing held at the Hamilton County jail in the detention room? A. Yes, sir. I had been advised by the United States Marshal that the defendants, about seventeen of them, were being brought here in a bus of some kind, and I was requested to go up to the jail and arraign them there, because there was such a large number of them, and I went to the Hamilton County jail.

Q. At the time you committed these men you fixed bond for their appearance before you at the Commissioner's hearing, I will ask you if any agent of the Federal Bureau of Investigation asked you to fix bond on certain defendants at $1,000 and others at $3,000? A. Yes, sir, Agent Mann, FBI, requested that I fix the bond of some-

one or more of them, I don't remember who they were, I don't remember their names.

Q. You don't recall the names of the one he wanted the bonds fixed for? A. No, sir.

Q. You disregarded the recommendation at that time and fixed all bonds at $3,000? A. I disregarded that and fixed all bonds at $3,000 except, I believe, Anderson and Jones's bonds were fixed at a larger amount.

Q. Refer to your record there of May 3, 1940? A. May 3rd?

Q. Yes, sir? A. All right.

Q. Read the notation you have on your book for May 3, 1940? A. "May 3, 1940, Clyde Huffman brought before me by Marshal Ricketts, and at the request of Mr. Mann, Agent, the bond of Felton Woodward was reduced from $3,000 to $1,000 and on this date said Woodward executed bond for $1,000 for appearance before me on May 6, 1940, with Ben F. Presswood of Ducktown, Tennessee, as surety."

Q. Did Mr. Mann make that recommendation that you reduce his bond from $3,000 to $1,000? A. Yes, sir, as shown by the record.

Q. I will ask you to look at your record there for May 2nd, and state if it shows that John McGhee was required to make a $3,000 bond on recommendation of these FBI Agents? A. The entry on May 2nd, the defendant John McGhee executed bond in the sum of $3,000 for his appearance before me on May 6, 1940, signed by B. F. Davis, as surety.

Q. Do you remember of your own knowledge whether or not some government agents, as a matter of

fact, recommended that bond be fixed at $3,000 for McGhee? A. No, I have no independent recollection about that.

Q. Now, at the time of the commitment hearing, I will ask you if an effort was made by some parties, and who it was, to prevent counsel being present at that hearing? A. After these seventeen, or about that number, these defendants were brought in, they were escorted into a room preliminary to being put in jail, in the room where the jailer stays; all of the defendants were taken into that room, and I went with them, or behind them, the only thing that attracted my attention in reply to your question was that the Sheriff of Hamilton County announced that nobody come in except the defendants and the officers. I had seen you on the outside, and I stated that this hearing was for the purpose of arraignment, and that the defendants had a right to have counsel present, and I directed that you be turned into the room.

Q. I could not get into the room until you issued that order that I be admitted? A. I don't know that anybody told you that you couldn't go in. There was quite a crowd there, some congestion, I don't know whether you were kept back by the crowd or whether an officer told you that you couldn't come in, but when it was called to my attention I had you brought in.

Cross Examination by Mr. Badgett.

X. Were any of the FBI present there then? A. Yes, sir, Mr. Mann, and probably other agents.

X. Did Mr. Mann tell Mr. Baker, in your presence, that he couldn't see these men? A. No, he didn't say

anything of that kind while we were in the room together.

X. Did you ever hear any FBI agent tell Mr. Baker, or anybody, that they could not see these men? A. No, sir, but on the contrary I told the jailor that attorneys for these defendants had a right to see them at all reasonable times.

X. Was that stated in the presence of these defendants? A. It was stated open and above-board, I think all the defendants heard me.

X. State if it was said in open court where everybody could hear it? A. Yes, sir.

X. I will ask you who has the authority to fix bond for defendants, the Commissioner or the FBI agent? A. Well, the Commissioner is charged primarily with that duty.

X. You fixed the bonds yourself? A. Yes, sir.

X. You fixed the bonds in this case? A. Yes, sir.

X. Not on the recommendation of Mr. Mann, but you exercised your own discretion? A. Yes, sir.

X. Did anybody, or did you hear Mr. Mann ask some of them be put under heavier bonds than others? A. No, sir, there was no reason given for that. To avoid my coming back, did you want to ask me who plead guilty up there.

Mr. Badgett: We will want to present that before the jury.

The Court: There is no way of doing that at this time. It will probably be some time before we get to that.

Mr. Badgett: I believe I will get that in the record now.

X. At that time that we are talking about, were any of these men arraigned? A. Yes, sir, on the occasion I told you about, when the defendants were brought in from Copperhill to the Hamilton County jail, after they got into the jailor's room I read the complaint to them, and I called over the list of the defendants named in the complaint.

X. Did you tell them what they were charged with? A. I told them, and I asked them to plead either guilty or not guilty as I called their names, and I stated in order to get it separated, all defendants who wanted to plead guilty to step over to this side.

X. Where was Mr. Mann at that time? A. He was present.

X. Was he among the defendants or with you? A. Well, I don't recall exactly where he was standing, probably at my side.

X. Was he talking while you were saying that? A. No, he didn't have a word to say

X. Any other FBI agents present? A. I think Mr. Plaxico, I am not sure. The room was pretty well filled, several deputy sheriffs, and the sheriff and others. I think Mr. Plaxico was there, I know that Mr. Mann was there.

X. Now go on with your explanation? A. I stated, as I called the names, those who wanted to plead guilty to stand over here (Indicating) and those who wanted to plead not guilty to remain where they were, over on that side; and as I called the names the defendants Ed

Simonds, Bob Rhodes, David Queen, Felton Woodward and Earl Hubbard stepped over and plead guilty. They were standing in a group to themselves, the five of them, and then it was I fixed their bond.

X. Your records show they did that? A. Yes, sir.

(This witness was then excused.)

The witness, COYLE RICKETTS, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

Q. You are a Deputy United States Marshal? A. That is right.

Q. Were you in charge of the bus on which these defendants were transported from Copperhill to Chattanooga? A. No more than another deputy marshal, Mr. Watson.

Q. When you got to the Hamilton County jail with them and placed these men in the jail, did you have any instructions as to what should be done? A. I knew what was to be done, put them in jail, and that is all. I had warrants for them.

Q. Is it not true, to refresh your recollection, that the five, Felton Woodward, David Queen, Rhodes and Hubbard were put into a separate part from the others? A. I don't remember that. I didn't have any instructions as to that.

Q. Were any instructions left there that they were not to see counsel? A. Not by me or by my office.

Q. You were there in that place, in the detention room? A. At the preliminary hearing, yes, sir.

Q. Do you recall who it was tried to keep me from going into the room where they were? A. No, sir, I

don't remember who it was. I was there, but it was not me.

Q. You know somebody did? A. I don't know they did or did not. I didn't hear anyone try to keep you from coming in.

Cross Examination by Mr. Badgett.

X. To your knowledge, did anybody give instructions that the defendants were not to see attorneys? A. My office did not.

X. They were federal prisoners at that time? A. Yes, sir; at the time I took them in.

(This witness was then excused.)

The witness, ED SIMONDS, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

Q. Is your name Ed Simonds? A. That is right.

Q. Now, take your time, talk loud enough so we can all hear you. How old are you? A. Thirty-two years old the 18th of last July.

Q. Were you formerly employed by the Tennessee Copper Company? A. I was.

Q. Did you go out on strike last year in July? A. Yes, sir, on the 14th, I believe.

Q. Were you arrested and taken into custody in this matter about April 24, 1940? A. I don't remember the date, somewhere along there.

Q. Was it on a Wednesday? A. I believe it was.

Mr. Badgett: I know it does not matter to your Honor but it appears in the record and I want to make objection that he not ask leading and suggestive ques-

tions. If there is a conviction and this record should go up on appeal, I want to make objection to it. I know it does not matter with your Honor.

The Court: Those questions were preliminary. There is no question about when he was arrested, is there?

Mr. Badgett: No, but all through these proceedings the questions have been leading and suggestive of the answers.

By the Court: Go on, I will rule out leading questions.

Mr. Baker: Who picked you up?

A. Roxie Campbell and another man, Pryor Crowe.

Q. Do you remember what time in the day it was? A. It was late in the afternoon, it must have been 3:00 o'clock or maybe later.

Q. Where were you taken when arrested? A. To the YMCA building in Copperhill, Tennessee.

Q. Who was there when you got there? A. I don't know who all. There were a lot of guards there and deputy sheriffs and FBI agents, they said.

Q. Did you identify any of these FBI agents here this morning? A. Yes, sir, two of them.

Q. You saw this group of men sitting in the jury box, the two men you talked to, were they in the jury box this morning? A. One of them was.

Q. Do you know his name? A. He said his name was Mann, I believe.

Q. How long did you stay at the YMCA building on the afternoon you were arrested? A. I don't know, I guess I was there maybe two hours, or more.

Q. Were you questioned during that period of time? A. All except a few minutes. I guess fifteen minutes I was not.

Q. Where were you questioned during that period of time? A. There in the building.

Q. Where were you taken when you left the YMCA? A. To the city jail.

Q. Where is that located? A. It is about thirty yards below the YMCA.

Q. Was anyone in jail with you that night, at the city jail? A. I believe Felton Woodward, and maybe someone else, I don't remember.

Q. How large are those cells at the city jail? A. About seven by seven feet, or seven by nine feet, something like that.

Q. How many beds in them, or bunks? A. Two.

Q. Is there room in one of those bunks for two men to sleep? A. You can get on them, but you are crowded to death.

Q. Did you sleep on a bunk that night? A. Part of the time.

Q. Where did you sleep the rest of the time? A. I set up in a chair and leaned back.

Q. Any covers of any kind? A. Yes, sir, some there.

Q. Did you get anything to eat the night you were put in jail? A. Not the first night, no, sir.

Q. You didn't get anything at all? A. No, sir.

Q. Did you get anything to eat the next morning? A. Yes, sir, some time in the morning.

Q. What did you get to eat? A. Some kind of sausage, baloney, I guess.

Q. A sandwich? A. Yes, sir.

Q. Was it hot or cold? A. Cold.

Q. Was that all you were given to eat? A. We had some coffee.

Q. Was that coffee all right? A. It was for the first three meals, from then on I couldn't drink it any more.

Q. Were you taken any place the next morning? A. I believe I was carried out that night again, about 7:00 o'clock.

Q. You mean the first night you were put in? A. Yes, sir.

Q. You were carried out again about 7:00 o'clock? A. Somewhere around that time.

Q. Where were you taken? A. Back to the city jail.

Q. You were already there? A. I was taken back to the YMCA, and then back to the city jail.

Q. Were you questioned there? A. Yes, sir.

Q. For how long? A. About the same time, two hours or more.

Q. Then where were you taken? A. Back to the city jail.

Q. Did you go to bed then? A. I don't remember whether I did or not.

Q. The next morning is when you got this sandwich you spoke about, what time were you taken from the jail the next morning, if at all? A. I don't remember what time in the day, some time in the day.

Q. You were taken out some time during the day? A. Yes, sir.

Q. Where were you taken? A. To the YMCA.

Q. Were you questioned there again? A. Yes, sir.

Q. For how long a period of time? A. I don't remember, it may have been less than the other time and may have been more, I couldn't say about that.

Q. Was that the only time you were questioned the next day, or were you questioned again? A. No, some time in the night, close to midnight, along about that.

Q. Had you in the meantime been taken away from the YMCA building, or were you still there? A. I was carried back each time to the city jail.

Q. Did you get any lunch the next day, after you got the baloney sandwich? A. Yes, sir.

Q. What did you get then? A. The same thing, another baloney sandwich.

Q. What did you have to eat that night for supper? A. The same thing.

Q. Were you woke up out of bed when they come after you about midnight? A. Yes, sir.

Q. Were you questioned by FBI agents? A. They said they were.

Q. Did you see them here this morning? A. Yes, sir, one of them, Mr. Roche was one of them.

Q. How long did they question you that particular time? A. About as usual, around anywhere from one to two hours. I wouldn't say each time, but after the first two or three times, I don't know just how long it was.

Q. After you got there that particular night, and after you were questioned, where were you taken then? A. I was carried back to the city jail.

Q. Do you remember what night of the week that was? A. That must have been on Thursday night. I don't remember for sure.

Q. Was it Thursday night, or do you remember which night you were picked up now? A. I don't remember, maybe it was Tuesday or Wednesday.

Q. At the time you were taken out at midnight, was that the first night after you were picked up, the second or third night? A. The second night, when it was so late.

Q. Now, the next morning after you were kept until after midnight, did you get anything to eat the next morning? A. Yes, sir.

Q. What did you get? A. It was the same thing all the time.

Q. Baloney Sandwich? A. Yes, sir.

Q. Did you also get some coffee? A. Yes, sir.

Q. Was that all right, or was something wrong with it? A. I drank about one-half of it and couldn't drink any more, it had a sickening taste.

Q. Did it make you sick? A. It made me nervous, my stomach was upset.

Q. Did it taste like coffee ordinarily does? A. No, sir, not like the first did.

Q. Did it as a matter of fact make you sick? A. Yes, sir.

Q. Were you questioned any that day after you had this coffee? A. Yes, sir.

Q. Do you know when that was? A. No, sir, I don't remember the time.

Q. How long were you questioned at that time? A. Usually around an hour or more.

Q. Now, when did you make a statement, do you recall what date it was? A. I don't remember the date.

Q. Do you know whether it was Saturday, Sunday or Monday; you were brought to Chattanooga on Tuesday, with reference to that when was it before that time? A. It was four or five days after I was picked up.

Q. Now, during these various conversations, and things of that kind, did you ever ask for a lawyer? A. Yes, sir.

Q. Who did you ask? A. At the time I asked Mr. Roche was present, Mr. Mann, I don't remember the other one's name, a light-headed fellow, had glasses on, he was sitting over here this morning.

The Court: Was it Mr. Plaxico?

The Witness: Yes, sir.

Mr. Baker: Did you get any response to your requests? A. I don't remember which one spoke first, when they asked me to make a statement again, they told me the night before that, that they were leaving, and if I didn't want to talk, all right, but this was my last chance; they said they would not be back any more, and it would be too bad for me. I told them I couldn't help that. When they came back in this time I asked for a lawyer—the time I asked for a lawyer was on the second day, that is when I asked for a lawyer.

Q. What I am asking is, what any of these agents said in response to your request? A. I don't remember

which one spoke first, one of them, I am not sure, I believe Mr. Roche said when I asked for a lawyer, he said, "you got awful damned smart since you have spent one night in jail."

Q. During all the time you were in there did you see anybody from the outside, during the days you were being carried around there from the YMCA to the city jail? A. You mean to talk to?

Q. Anybody close enough for you to talk to? A. Nobody only FBI agents and guards.

Q. Was there a large number of company guards in that building? A. A good many, I don't know how many.

Q. While you were being questioned at these various times did you see any of them walking around through the building? A. Part of the time, when the door was open they would pass and look in, and pass on by.

Q. Were they armed? A. Yes, sir; they usually had short guns, didn't have any rifles.

Q. Would they laugh and sneer at you? A. They were laughing, I don't know whether laughing at me or not.

Q. Were you made any promises by anybody as to what would be done for you if you would make a statement? A. Yes, sir.

Q. What did they promise you, and who made the promises, if you remember? A. Plaxico did most of that. He said he had a lot of influence with the Judge down at Chattanooga, and if I would come along and make a statement probably he could get me out for six months,

it might be a year, and he might get me out on parole and I wouldn't have to serve any time. If I didn't make a statement I would get fifteen years, he said the limit was thirty-five years on my case.

Q. Was any statement made about bond? A. Yes, sir, they said they would get me out on bond.

Mr. Badgett: Who is "they"?

Mr. Baker: Do you know who said that?

A. Plaxico.

Q. Was any mention made as to what the amount of bond would be? A. I believe he said he might be able to get me out on a One Thousand Dollar Bond.

Q. Did somebody about that time send you a bond, made out in the amount of $1,000? A. My wife got one, Roxie Campbell said she brought it to her to get it signed.

Q. I will ask you to state if these various FBI agents, and name them if you can, made any threats or cursed or abused you? A. I was often called a damn liar, and one time Mann was standing in front of me, he walked up close to my face, slung his hand back and said, "you are a God damn lying son-of-a-bitch."

Q. Did he at that time throw his hand back? A. He knocked his coat back that way (Indicating).

Q. Could you see whether he was armed or not? A. He had a holster. I got a glance of a holster or black jack, or something.

Q. Did these various agents, and name them if you can, tell you that they knew what the truth was about this situation? A. They often told me that.

Q. If you made a statement that disagreed with what they thought the truth was, would they call you a damned

liar? A. Yes, sir; when I started to answer they would say, "hush, we don't want to hear that any more," and I said "if you are trying to put the words in my mouth I have nothing else to say" and they said, "Yes, you are going to talk."

Q. Did you lose any weight in those four or five days? A. About a week or ten days before I was arrested I weighed one hundred and ninety-one pounds. I don't know what I weighed just as I was carried off down here, but the next day or so, when I got to feeling a little better, they took me over to the scales, they were weighing us as we passed through, and I don't remember whether I weighed one hundred and fifty-two pounds or one hundred and fifty-five pounds.

Q. You did weigh one hundred and ninety-one pounds before you were arrested? A. That is right.

Cross Examination by Mr. Badgett.

X. You weigh one hundred ninety-one now? A. I am not sure. I weighed something like two weeks ago, one hundred and eighty something.

X. Stand up? A. (Witness stands up as requested by counsel.)

X. You say you lost forty pounds in a week and a half? A. I went from one hundred and ninety-one to one hundred fifty-two or one hundred and fifty-five.

X. You got that beat off of you? A. No, sir, nobody hit me.

X. How come you to lose it? A. I was dragged around and treated like a dog and threatened, and it worried me and I lost that much.

X. Did you tell Mr. Roche, or any of the other officers, or FBI agents, that you had received better treatment there than at any time since you had been on strike? A. No, sir.

X. And had more to eat? A. No.

X. You praised the FBI for the way they treated you? A. No, sir. The only remarks I made, I said our country needs this kind of men, we have to have them, they were talking about being FBI agents and I told them I was proud of a man that helped to run our country.

X. Why did you make that statement? A. Because the country needs men like that.

X. The country needs men who treated you like you say you were treated? A. That was along at the first.

X. They treated you nice at first? A. They didn't talk so bad the first day.

X. You said that the first day? A. Somewhere along there, yes, sir, the first time they questioned me, or the second time.

X. You were impressed with the way you were being treated at that time? A. No, I didn't like it.

X. Then, why did you make that statement? A. Well, I did not appreciate being treated that way, but still we need men to check up on things they figure was being done wrong, that is what I meant, not the way they were treating me.

X. What caused you to make such a statement as that? A. Because the subject was brought up about the law or something, I don't have any objection to the

laws of our country, I like it, but I don't think they are carried on right sometimes.

X. As a matter of fact, didn't the FBI agents, all of them, treat you like a gentleman, and in a manner that you should be treated? A. In the last, they did not.

X. Altogether? A. After we came down here I was treated pretty nice, I have no objections about down here.

X. Do you smoke? A. Yes, sir.

X. When you wanted a cigarette they gave you one? A. That is right.

X. The others were treated the same way? A. I don't know about that.

X. You didn't hear anybody ask for a cigarette who was refused? A. I don't remember hearing anyone ask for one.

X. You do remember they gave them to you? A. Yes, sir.

X. Did you ever tell them you were hungry, that they didn't give you something to eat? A. I didn't tell them I was hungry.

X. You gave this statement three days after you were in jail? A. I don't remember whether three or four days.

X. The first day you were arrested, at what time in the day? A. It must have been between 3:00 and 4:00 o'clock.

X. Didn't you say it was nearly dark? A. No, sir.

X. Were you questioned that day? A. Yes, sir.

X. How long? A. I guess about two hours.

X. By whom? A. Mann and Roche.

X. Were they together? A. Yes, sir.

X. Nobody else came in and questioned you as soon as they went out and started questioning you again? A. I don't remember if anyone came in. Just before they went out Broughton Biggs came in and sat down and cut me off pretty short, and that was all that was said until they carried me back that night.

X. These agents did not snap you off? A. Not the first time.

X. You said they treated you nice? A. The first time, yes.

X. They just asked you to tell what you knew about it? A. Yes, sir.

X. Did they use threats on you? A. No, they told me they had the goods on me. They didn't call me a liar at that time.

X. They asked you to tell the truth about it, didn't they? A. They said to me that I was not telling the truth.

X. What did you tell them? A. I told them I was.

X. What had you told them that they said you were not telling the truth? A. That I didn't know anything about it.

X. When were you again questioned? A. I was questioned that night, around 7 o'clock.

X. Two times that day? A. Yes, sir, that afternoon when they first arrested me, 15 or 20 minutes after they got me there, they carried me to the city jail and then carried me back about 7 o'clock. Roche and Mann were there. I know Roche was.

X. These FBI agents, you know them by name? A. I know Mann, Plaxico and Roche.

X. Mr. Plaxico is the man who took your statement? A. The best I remember, I am not sure about that.

X. They told you who they were? A. They told me that at first.

X. They told you they were members of the FBI? A. Yes, sir.

X. And that they were there to investigate the dynamiting of the TVA lines? A. Yes, sir.

X. Then they asked you about it? A. They asked what experience I had had with powder, where I worked and how long I had been working.

X. Who do you say took you out at midnight, and what night was it? A. I didn't say they carried me out at midnight; it was before midnight, I don't remember just what time.

X. Three o'clock in the afternoon? A. That is not night, it was after dark, between seven and—

X. You tried to leave the impression they took you out at midnight? A. No, sir, it was before midnight.

X. How long before? A. Maybe two hours.

X. Maybe three hours? A. Maybe not that long.

X. Do you know what time they did take you out? A. No.

X why did you try to fix the hour at midnight? A. It was late, bed time for me.

X. You don't know the exact time? A. No, not unless I had a watch or a diary.

X. You are not stating what time they took you out? A. I am not sure; it must have been around 9 or 10 o'clock.

X. What day was that? A. I don't remember.

X. Was it before you made a statement or after? A. That was before, the best I remember.

X. Who told you it would be too bad if you didn't talk? A. Plaxico.

X. What did he mean by that? A. He said it would be too bad, maybe 15 years or 35 years, and wanted to know if I didn't love my wife and kids, and I told him I did.

X. He told you that if you would make a confession, that he had a lot of influence with the Judge at Chattanooga? A. Yes, sir.

X. That he would see that you got a parole, or if he couldn't do that would see you got 6 months or a year? A. That is right.

X. Mr. Plaxico told you that? A. He is the one; Roche did at times, I don't believe that Mann did.

X. I want to know which ones? A. I don't remember for sure.

X. Are you sure about Plaxico? A. I don't remember for sure whether he did or not.

X. Didn't you say to your attorney that Mr. Plaxico told you that? A. I don't remember who threatened me.

X. Do you remember who told you that? A. He told me I would get 15 years, maybe 35 years.

X. Who told you that? A. I remember Plaxico, I remember him distinctly.

X. You remember Mr. Plaxico did? A. Yes, sir, at different times.

X. Didn't you state you couldn't remember? A. If Roche did.

X. You don't remember whether Mr. Roche did or not? A. I believe he did, I am not sure.

X. You know Mr. Plaxico did? A. Yes, sir.

X. What were the words he told you? A. He said "you may get 15 years, maybe 35 years, you will go away from your wife and kids"; I said that I couldn't help it.

X. Just what did you tell him; "I cannot help it"? A. Yes, sir, and "I will not tell you I did when I didn't."

X. You didn't give a statement then? A. I don't remember what all I told them, I got so weak and nervous.

X. You finally made a statement? A. I guess that is when I made it.

X. Are you guessing? A. I don't remember it.

X. You don't remember writing a statement and signing it? A. I didn't write any statement.

X. Do you remember signing a statement? A. I remember signing a statement, or something.

X. Do you remember talking about the case? A. They talked about it all the time.

X. Do you remember that you and Woodward and Hubbard went over the case together and discussed the details of the case together, among yourselves? A. I did not discuss it.

X. That didn't happen? A. Not with me, no sir.

X. You didn't spend the night in jail with Woodward and Hubbard so you could get your stories straight-

ened out? A. No, sir; I didn't fix up any story; didn't have any to fix up.

X. You stayed with them? A. Yes, sir.

X. One night? A. More than one night.

X. At the request of Earl Hubbard? A. I don't know anything about his request.

X. You were present when he told his part? A. I don't remember being present when he said anything.

X. Were you present when Woodward made his statement? A. I don't remember about that.

X. Were you drunk? A. No, sir. I would have been better off if I had been.

X. Answer my question. A. I hadn't had a drink.

X. Who did you ask for a lawyer? A. At that time I asked for a lawyer there was Mann, Roche, Plaxico, I believe, there.

X. Mr. Roche said— A. I said that I didn't have any more to say until I got me a lawyer, and he said "what is the matter with you, you got awful damned smart since you spent a night in jail, have you."

X. Mr. Plaxico promised to get bond for you for $1,000 if you would talk? A. He said he would get me out on bond, that the bond would be away down.

X. What did Mr. Mann call you? A. A God damn lying son of a bitch.

X. When did he call you that? A. I don't remember whether it was the 2nd or 3rd day.

X. At the time he did that he pulled his coat back and showed you a gun? A. He made about three steps, he was standing about four steps from me, he made about

three steps and slung his coat back, knocked his coat out, and said "you are a God damned lying son of a bitch."

X. What had you said? A. I was denying knowing anything about it.

X. That is the reason he called you that? A. That is right.

X. You lost 40 pounds from the time you were arrested? A. Yes, sir; I don't know that much, but from 191 pounds to 150 something.

X. You are familiar with your own signature? A. I guess I am.

X. Does this look like your signature? (Handing paper to witness.) A. Yes, sir.

X. Look at the initials on each page and see if that is your writing? A. Looks like it.

X. That is your writing? A. Looks like it. The signature is.

(This witness was then excused.)

The witness, ROBERT DALE, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

Q. You are Mr. Robert Dale? A. Yes, sir.

Q. Mr. Dale, are you bookkeeper at the Hamilton County jail? A. Yes, sir.

Q. Were you such bookkeeper on April 30, 1940? A. Yes, sir.

Q. Do you have with you the original jail records? A. Yes, sir.

Q. Will you turn to April 30th? A. April 30th.

Q. I will ask you if you find where Ed Simonds was registered in the jail on that day? A. Yes, sir.

Q. What was his weight when he was checked in? A. His weight?

Q. Yes, sir? A. A hundred and sixty-five.

Q. Now, is it customary to always weigh prisoners before you place them in jail? A. That is right.

Q. Look at Felton Woodward? A. All right, sir.

Q. What was his weight? A. A hundred and fifty-five.

Q. A hundred and fifty-five? A. Yes, sir.

Q. What was Earl Hubbard's weight? A. Hundred and sixty-nine.

Q. What was David Queen's weight? A. Hundred and seventy-five.

Q. Robert Rhodes? A. A hundred and fifty-five.

Q. Ben Cross? A. Ben Cross, a hundred and thirty-eight.

Cross Examination by Mr. Badgett.

X. You don't know what their normal weight is, do you? A. No, sir.

(This witness was then excused.)

The witness, BEN CROSS, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

The Court: There is no confession of this defendant involved is there?

Mr. Baker: I don't know whether there is or not.

The Court: Not so far.

Mr. Baker: I understand he made some sort of statement—I don't know what it is.

The Court: I don't think Mr. Roche testified anything about him—of course, you can introduce him concerning the others.

Mr. Baker: To show the sort of treatment he got.

Q. Your name is Ben Cross? A. Yes, sir.

Q. How old are you, Ben? A. Forty-eight.

Q. How many children have you? A. Got twelve—eleven and one dead.

Q. When were you arrested? A. Well, they took me up—they said they wasn't arresting me they just wanted to talk to me, the 28th of April.

Q. Who did that? A. Roxie Campbell.

Q. Where did he arrest you? A. In Georgia.

Q. Came across the line in Georgia and got you? A. Yes, sir.

Q. Was anybody with him? A. There were two more strangers, I don't know who they were.

Q. You know whether they were FBI agents? A. They said they was not; when they got to the YMCA they asked for them.

Q. They did take you to the YMCA? A. Yes, sir.

Q. Were you questioned any time at the YMCA? A. Yes, the next morning.

Q. That was Monday morning? A. Yes, they took me in at 12:00 at night.

Q. What time did they start questioning you Monday, Ben? A. In the morning early.

Q. How early? A. I don't guess it was later than 8:00 o'clock.

Q. How long did they keep you over there? A. Until between 3:00 and 4:00.

Q. Now, did the same man question you all the time or different men question you? A. Well, there was just the two but they took it time about.

Q. Did you get anything to eat at lunch that day? A. Didn't get nothing after my breakfast until between 3:00 and 4:00.

Q. Did anybody call you a liar there? A. Well, he called me a liar different times.

Q. Did they call you anything besides a liar? A. Well, called me a liar and a son of a bitch.

Mr. Badgett: I object to "them" for the same reason stated heretofore. Want to know who it was.

Mr. Badgett: You saw these men over here this morning—

The Witness: The one that was rearing at me was the second man that wore glasses—he set in that second seat.

The Court: Who was that?

Mr. Badgett: Lunsford.

The Witness: I can show him to you if you bring him in.

Mr. Baker: What else did they call you, if anything?

A. I can't remember what all they did call me.

Q. Well, did they call you a damn liar? A. They called me a damn liar.

Q. What else besides liar? A. Lying son of a bitch.

Q. Did any of them curse you any more than that? A. No, there was not but one cursed me—that one that wore glasses.

Q. Any of them tell you they had a right to do anything to you? A. One of them told me they had a perfect right to kill me and leave me in the dark.

Mr. Badgett: One of them—if your Honor please, I object to that.

Mr. Baker: You know which one?

A. The same one that had glasses on.

Q. That Lunsford? A. I will not say what his name is.

Mr. Badgett: Wait a minute, we will bring them in and let you see them.

The Witness: I know both of them but don't know their name.

The Court: Both of them?

The Witness: There were two talked but one treated me reasonably well and the other treated me terribly bad. I can show him to you.

The Court: Is the Government insisting on any confession from this defendant?

Mr. Badgett: We have a statement from him—no confession.

The Court: Anything you expect to use in the case?

Mr. Badgett: May use it.

The Court: How you expect to use it if it is not a confession?

(Agent Lunsford thereupon came into the court room.)

The Witness: There comes the man.

Mr. Baker: Is that the man Mr. Cross?

A. That is the man.

Q. Now, did they allow you to go outside anywhere to a bath room or anywhere during this time they were questioning you? A. They would not allow me to get up off my seat.

Q. Did you tell them you wanted to go to the bathroom? A. Yes.

Mr. Badgett: I am still objecting to "them," Your Honor.

A. I asked them to go different times.

The Court: What I can't understand about these statements—I want to know if the Government has got a confession.

Mr. Badgett: We have not got a confession, we have a statement we may use to corroborate certain other matter.

Mr. Baker: I am introducing this witness, if your Honor please, for the purpose of corroborating what these other people have said.

The Court: Well, that is not corroboration. Each man has a plea separate and apart from the others.

Mr. Baker: I think it throws some light on it.

The Court: I don't see it.

Mr. Baker: Irrespective of that I would like to put it in the record the benefit of the record.

The Court: Well, it is already in.

Mr. Baker: There is one other question I want to ask—two more questions.

Q. I believe you just stated you were not permitted to go to the bath room? A. No, they didn't allow me to go.

Q. Well, did you have to ruin your clothes? A. Yes, I wet my clothes.

Q. Did you tell them you wanted to go? A. I told them I wanted to go.

Q. Who did you tell that? A. I told both of them.

Q. Told both of them? A. Yes.

Q. And one of them was this man Lunsford you talked about? A. Yes, sir.

The Court: How would it be competent to introduce a statement?

Mr. Badgett: It would not be. All we could use it for might be to develop cross-examination.

The Court: Well, you could do that anyhow.

Mr. Baker: Of course, if they have a statement and it was not voluntarily obtained, it could not be used for the purpose of cross examination, so that, of course, would have to be passed on along with the others. If they expect to use it for the purpose of cross examination or whatever it may be, then it is a matter that should be gone into.

Mr. Badgett: As I understand it, we can ask anything in an effort to impeach the man, no matter where we get it. If we conjure it out of our own mind we can use it.

Mr. Baker: As I understand the rule you cannot take an incompetent confession that is not voluntarily obtained and cross examine a witness.

The Court: They said it is not a confession.

Mr. Townsend: We can't tell about that.

The Court: I will pass on that when we get to it, come down.

(This witness was then excused.)

The witness, FELTON WOODWARD, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

Q. Felton, you are one of the defendants? A. Yes, sir.

Q. Talk out loud so we can all hear what you have to say? A. Yes, sir.

Q. On what day were you picked up in this matter? A. I believe it was on the 24th of April.

Q. You remember what day of the week that was? A. On Wednesday.

Q. What time of day were you picked up? A. About noon or shortly after.

Q. Shortly after noon? A. Yes, sir.

Q. Who picked you up? A. Mr. Campbell and Crowe, I believe.

Q. Roxie Campbell and Pryor Crowe? A. I know it was Roxie, but wouldn't be sure—

Q. Did they place you under arrest or merely tell you they wanted to take you some where? A. Well, I asked him if he had a warrant for me—he said, no he didn't have me under arrest, just wanted to take me and let them talk "to you a little bit" and be right back.

Q. Where did they take you? A. YMCA.

Q. How long did you stay there Felton? A. Well,

I stayed there at that time about three or four hours, I guess.

Q. Were you questioned during that period of time? A. No, sir.

Q. You were not? A. No, sir.

Q. Where were you taken then? A. To the City jail.

Q. Was there any one in the city jail when you got there? A. Well, I don't know as there was.

Q. Any one come in later in the night? A. Yes, sir, Simonds and—well, I am not sure whether Earl Hubbard was in there or not, but I believe Simonds.

Q. Now, did you get anything to eat Wednesday night? A. No, sir.

Q. Nothing at all? A. No, sir.

Q. Were you questioned any more that night, Wednesday night? A. No, sir.

Q. When were you next questioned? A. Well, I was not questioned at all until Thursday night.

Q. Until Thursday night. Did you stay in the city jail all day Thursday? A. Yes, sir.

Q. Was any one there with you? A. Well, I don't think there was.

Q. Don't think there was. Did you get anything to eat Thursday morning? A. Well, we got a sandwich, I think.

Q. What kind of a sandwich was it? A. Bologna sandwich.

Q. Was it cold? A. Yes, sir.

Q. How was that coffee served to you? A. In a milk bottle.

Q. Was that coffee all right or was there something wrong with it? A. Well, at that time—

Q. It was all right at that time? A. It tasted pretty good.

Q. Thursday night you say you were questioned, at that time? A. Well, about, I suppose it was 8:00 or 9:00.

Q. Where were you taken for this examination? A. YMCA.

Q. Who carried you to the YMCA? A. Mr. Campbell, I believe.

Q. Roxie Campbell? A. Or some of the guards there, I wouldn't be sure.

Q. Who did you find when you got to the YMCA? A. I found Mr. Mann and Sheriff Biggs and another fellow that was over here this morning.

Q. You know his name? A. No, I wouldn't be positive about his name—I know his face.

Q. How long were you examined there? A. Well, three or four hours I would say.

Q. Right there, did you get anything to eat at noon Thursday before you went to the YMCA? A. Well, I think I did, at noon.

Mr. Badgett: I think—

A. Yes, I got something.

Q. What was it? A. Just a sandwich.

Q. Bologna sandwich? A. Maybe two of them.

Q. Did you get anything to eat Thursday night before you went to the YMCA? A. No, sir—no, sir.

Q. Nothing at all Thursday night? A. No, sir.

Q. Now, what time did you say the examination started Thursday night, about 8:00 o'clock, as I recall you said? A. About 8:00 or 8:00 o'clock along there.

Q. How long did you say it lasted? A. Well, I would say three hours or better.

Q. You know what time you got away from the YMCA, if you got away? A. Well no, I couldn't say—around midnight though.

Q. Now, where did you spend Thursday night? A. Well, I was taken back to the city jail.

Q. Was anybody in there that night? A. Thursday night? Yes, sir.

Q. How many was in there, do you know? A. Well, there was—I believe there was four.

Q. Were they all in the same cell? A. Yes, sir.

Q. Where did you sleep that night—did you sleep in a bed or cot? A. Well, didn't do much sleeping.

Q. Was there room there for four people to sleep? A. No, just two cots—double deck cots—single cots.

Q. All right. Now, did you get anything to eat the next morning? A. Well, yes, sir, we got a sandwich.

Q. Same kind of sandwich? A. Yes, sir.

Q. Same bologna sandwich? A. Bologna sandwich.

Q. Did you get any coffee that morning? A. Yes, sir.

Q. Was it all right? A. Well, I began to—I was taking a headache about the time and I decided it was the coffee.

Q. That was on Friday, was it not? A. Yes, sir.

Q. Did you drink your coffee on Friday morning? A. Yes, sir.

Q. Did it make you sick? A. Well, I couldn't say the coffee made me sick but something got me nervous.

Q. Well, were you sick Friday? A. No, not to say just sick—I was sick but I was restless.

Q. Were you sick any time during the day Friday? A. Yes, sir, I think so. Well, I am positive though.

Q. Where were you taken to be questioned? A. YMCA.

Q. For what period of time were you questioned? A. At that time about three hours, I would say.

Q. Was that during the day or night? A. That was in the afternoon.

Q. What happened when they got through questioning you? A. They carried me upstairs, in the top of the YMCA—upstairs part of it.

Q. Did you spend the night there? A. No, I stayed there until further questioning by some more.

Q. You mean you were brought back from upstairs and questioned some more Friday night? A. Yes, sir.

Q. For how long a period of time? A. Well, around three or four hours, I guess.

Q. Well, how late was it when they got through, do you know? A. Well, I believe it was around 11:00 o'clock.

Q. Where were you taken when they got through with you? A. Back to the city jail.

Mr. Badgett: He said "they." Mr. Baker is getting in the habit of it now.

The Court: Yes.

Mr. Baker: Well, who questioned you that Friday night, if you remember?

A. Well, this fellow that set right over here (indicating). I can't recall his name. He was the first one that questioned me that afternoon and Mr. Roche.

Mr. Badgett: There were several sitting there, we would like for him to point out the seat.

The Witness: I can't point out the seat, I will point the man out if they get him in here.

The Court: Bring him in. Not right now. Just questioning him, of course, that don't amount to anything. Has to be something more than questioning.

The Witness: Mr. Roche and some man questioned me that night.

Q. That was about, you say, 11:00 when you got through that night? A. Yes, sir.

Q. And you were then taken back to the city jail? A. Yes, sir.

Q. How many of you were in the cell that night? A. There was some four, I believe.

Q. Did you get any sleep Friday night? A. Well, I practically didn't get any sleep at all—I don't say I didn't get any, but just off and on.

Q. What did you get to eat Saturday morning? A. Well, just sandwich is all they had, bologna, seemed like.

Q. When was the next time you were questioned, Felton? A. Well, I believe I stayed in the jail by myself the next day. They cleared the thing up and I stayed in there by myself. I was questioned Saturday sometime that night.

Q. Now, on Sunday, did you get anything to eat? A. No, sir.

Q. Were you in jail then? A. Yes, sir.

Q. Where were you in jail? A. In the city jail.

Q. Was any other person in that building besides you? A. No, sir.

Q. Did anybody bring you anything to eat at all during the day or night? A. No, sir, they did not.

Q. Did you ask any of these FBI men for medicine at any time? A. Well, yes, sir.

Q. You remember which one you asked? A. Well, I wouldn't say they was FBI or guards—I asked him for some medicine.

Q. Did anybody bring you any medicine? A. They brought me Stanback—Mr. Crowe I believe brought me Stanback.

Q. Did you ask him to call a doctor? A. No.

Q. Well, now, when were you questioned again, Felton? A. Well, I believe that last questioning was on Friday—I was questioned I think on Saturday.

Q. I mean when did you make a statement, what date did you make a statement? A. I didn't make any statement like they claim.

Q. When did you finally agree to do whatever you did—you did sign a paper, didn't you? A. Yes, sir.

Q. When was it you signed that paper? A. Monday night.

Q. What time Monday night? A. About 11:00 or 12:00.

Q. 11:00 or 12:00 o'clock Monday night? A. Yes.

Q. During all these various examinations did anybody curse you? A. Yes, sir, certainly did.

Q. Who was it? A. This fellow that sit over here—I can't recall his name.

Q. You mean the one in the back row? A. Mr. Mann did.

Q. What did any one of them call you? A. Mr. Mann, the first time he questioned me at all called me a God damn liar.

Q. All right, what else did anybody call you—tell me who it was called you that? A. Mr. Mann, the first time—Mr. Biggs was in his presence. Sheriff Biggs was in on the first questioning.

Q. Were you cursed at any other time? A. Yes, sir.

Q. By who? A. By another FBI man.

Q. You know which one it was? A. Yes, sir, I can point him out.

Q. What did he call you? A. God damn liar and son of a bitch. I raised up out of my chair and told him I didn't take that.

Q. What did he say? A. He said he wasn't throwing any reflection at my mother. Kind of laughed it off and I told him being who he was I would let him by with it, I would have to.

Q. At various times during all this continued questioning did Mann, Roche or these other FBI men tell you that they knew what the truth was about that situation? A. Yes, sir.

Q. If you made a statement they didn't like did they tell you that was not true? A. Sure, yes, sir.

Q. Call you a damn liar? A. Yes, sir, at different times. Said they had come in there to break that strike —that they intended to break it before they left.

Mr. Badgett: I object to "them."

Mr. Baker: Who said that, Felton?

A. This little fellow that sit over here—I am going to point him out when they bring him in. I believe he sit on that second seat, I am not sure, on the back.

Mr. Baker: You may ask him.

Cross Examination by Mr. Badgett.

Mr. Badgett: Bring those FBI men in (addressing the Marshal).

X. Before they get in what was it that last man said about coming there to break the strike? A. Said he had come here, they was going to break this thing, that this led to killings, and they was going to break it and save a lot of trouble.

X. Going to break the strike? A. That is right.

X. What did he say about leading to killings? A. Said stuff like this led to killings "and we are not after you, we are after Mr. Anderson."

X. Not after you but after Mr. Anderson? A. After Mr. M. C. Anderson, he is the one.

(FBI men at this time came into the court room.)

X. Now, Mr. Woodward, which of these men was it that questioned you first? A. (Witness starts to leave the witness stand.)

The Court: Just point him out from there.

A. Mr. Mann, right here.

X. Which one is Mr. Mann? A. This fellow with a brown suit on, and this fellow with glasses on.

X. The man with glasses on? A. Yes.

X. This man? (indicating.) A. Yes, sir.

X. All right, that is Mr. Heavrin, now which one of them, in the presence of Sheriff Biggs, called you a God damn liar? A. Mr. Mann.

X. Mr. Mann? A. Yes, sir.

X. That is the gentleman in the brown suit? A. Yes, sir.

X. Which one of them called you a God damn liar and son of a bitch? A. This fellow right here with a blue suit on.

X. (Stand up, Mr. Morgan.) This man? A. He is the one that called me a God damn liar and a son of a bitch.

Mr. Badgett: Your name is Morgan?

Mr. Morgan: Yes, sir, R. L. Morgan.

Mr. Badgett: Who was present when Mr. Morgan called you that?

A. I don't know any one was in the room—the door was open.

X. Huh? A. I don't know as any one was in the room at that time.

X. You don't know? A. The door was open. There could have been some one on the outside of the room looking in.

X. I will ask you that later. Now, where was that—what occasion was that when Mr. Morgan called you that? A. That was on Friday.

X. Friday. Where about were you? A. YMCA.

X. Now, which one told you "we have come here to break this strike, things like this lead to killings, we are not after you but we are after Mr. Anderson"? A. That was Mr. Plaxico.

X. Where was that? A. In the YMCA.

X. When was that? A. That was on Sunday night.

X. Which one of these men refused to give you a cigarette? A. This fellow here with a blue suit on.

X. Knocked a cigarette out of your hand? A. I didn't have a cigarette, I just started to get one—no smoking.

X. Wouldn't allow smoking? A. Wouldn't allow smoking.

X. That was Mr. Morgan, the man with the blue suit? A. Yes, sir.

X. In the front row? A. Yes, sir.

X. Did any of these other men say anything to you —threaten you in any way, if so point out which one and tell what he said? A. Well, I don't know of any more.

(At this point the FBI men left the court room.)

X. Now, you say this was on Friday that the man in the blue suit, Morgan, was talking to you? A. Yes, sir.

X. And what was it he called you—what did he call you the first time—what was it he called you, a God damn liar? A. That was Mann, the first time.

X. And Morgan called you other things? A. That is right.

X. And what FBI agent was it you asked for medicine? A. Well, I don't think I asked an FBI man.

X. Felton, I want to ask you now how it was that the FBI found out you signed your name in Alabama as John M. Cash?

Mr. Baker: If the Court please, we object to that—that goes into the merit of the matter.

The Court: Well, I want to hear about it, it won't hurt anything.

Mr. Baker: Your Honor please, that is a very material matter in the trial of this case—a matter that is not at issue at the present.

The Court: Well, does that reflect anything—

Mr. Badgett: Yes, it will.

The Court: How?

Mr. Badgett: He bought dynamite down in Birmingham and we are going to be in position to prove—

Mr. Baker: That is a matter that does not go to the merit of this voluntary confession.

The Court: Is that in the confession?

Mr. Badgett: Yes.

The Court: Well, sustain it.

Mr. Badgett: I want you to examine this, Felton (showing witness a paper)—see that signature?

A. Yes, sir.

X. See that one—that is your full signature, Felton M. Woodward? A. Yes.

X. That one? A. Yes, sir.

X. That one (showing witness a paper). A. Yes, sir.

X. And then on the last page? A. Yes, sir.

X. That is your signature isn't it? A. Yes, sir.

X. On each page your full signature? A. Yes, sir.

X. And you gave this statement in the presence of McCabe, Heavrin and Mann didn't you? At the time you gave that they didn't make you any promises? A. I didn't give any statement like that—no statement like that.

X. How do you know what is in that statement? A. I am positive I could not have give something like that.

X. How do you know what is in it? A. Well, I heard it read.

X. When did you hear it read? A. At the trial before.

X. What was in it? A. I don't remember what all was in it.

Mr. Baker: That still is going into something that has no bearing on this matter.

The Court: Yes, sustained.

Mr. Badgett: You did sign your name though to it —that is your signature?

A. I signed my name.

X. And you gave it on April 29th? A. Well, it was on Monday.

X. You are positive it was on Monday? A. Yes, sir.

X. Could not have been on Sunday? A. It was on Monday—I remember about us coming to jail the next day.

X. Remember what? A. I say I remember it by us coming to jail the next day, and that was on Tuesday.

X. Coming to jail where? A. Bringing us to jail down here.

X. Down here in Chattanooga? A. Yes, sir.

X. You came to jail in Chattanooga the day after giving this statement? A. Yes, sir.

X. Any of these men ever hit you? A. No, sir.

X. Any of them ever threaten you with thirty-five or forty years? A. No, they just told me they had a place in Atlanta that would make me talk.

X. Had what? A. Had a place in Atlanta they would take me and make me talk.

X. Had a place in Atlanta they would take you and make you talk? A. Yes, sir.

X. Who said that? A. This little fellow that had the blue suit on.

X. Morgan? A. Yes, sir.

Re-Direct Examination by Mr. Baker.

RQ. Felton, was any statement made to you by any of these FBI men about your bond, and if so give the name of the one who made the statement, if you know? A. Well, Plaxico said that he would arrange bond for us, at whatever bond we thought we could make, and he would take that bond—anybody could sign the bond—most anybody.

RQ. Were you released shortly after you were committed to jail under $1,000 bond? A. Well, I was released, I wouldn't say as to what the bond was because I didn't see it, I signed it but I didn't—

RQ. You signed it? A. Yes, sir.

RQ. Was it brought to you to sign? A. Well, it was handed out to me in the jail down here in the clerk's office.

RQ. Who handed it to you? A. I reckon it must have been the clerk. I understood Sweat had it fixed so we—all I had to do was sign it as I went out.

RQ. Well, did Plaxico tell you he would fix the bond at any certain amount? A. He said $500 or $1,000.

RQ. Or $1,000? A. Yes.

The Court: When was it he told you that?

The Witness: On Sunday night.

Mr. Baker: Was that before you made a statement on Monday night?

A. Yes, sir.

RQ. Was any statement made to you by Plaxico or any of the others as to whether you would get off light if you would make a statement? A. Well, he would see I was paroled.

RQ. He would see you got paroled? A. Yes, sir.

RQ. Who was it said that? A. Plaxico.

The Court: Did you make any verbal statement to Mr. Roche?

The Witness: No, sir—no, sir.

The Court: Didn't make any?

The Witness: No, sir.

Mr. Baker: Now, when you were first arrested and taken to the YMCA by Pryor Crowe and Roxie Campbell did they have any warrant, Felton?

A. No, sir.

RQ. Were you ever taken before a Justice of the Peace? A. No, sir.

RQ. At any time? A. No, sir.

RQ. Did you know what you were charged with all the time you were in this YMCA building or city jail? A. No, sir.

RQ. When was the first time that you found out what you were charged with? A. Well, when I come down to Chattanooga.

RQ. When you got to Chattanooga? A. Yes, sir.

Mr. Baker: All right.

The Court: You didn't know what you were charged with until you were talking about fixing up a bond?

The Witness: No, sir.

The Court: Had no idea?

The Witness: No, sir.

Re-Cross Examination by Mr. Badgett.

RX. Didn't know until you got here in the City of Chattanooga? A. Well, they read it all down here.

RX. Down here in Chattanooga. Then you knew? A. Well, I didn't know the meaning of all of it, no.

The Court: Didn't you know when they had you up there talking about it, it was about that dynamiting up there?

The Witness: Well, that is what they was talking to me about—talking to me about the dynamiting.

Mr. Badgett: And that is when you told the Commissioner you were guilty when that was read off?

A. Yes, sir.

RX. What did Mr. Plaxico tell you, parole what? A. Well, just to get out.

RX. Told you you would get paroled and would never have to serve any time, that right? A. Yes, sir.

Mr. Badgett: All right, come down.

Re-Re-Direct Examination by Mr. Baker.

RRQ. Were you instructed to plead guilty by anybody, Felton? A. Yes, sir.

RRQ. Who told you to plead guilty? A. Plaxico and Campbell and Biggs was together.

RRQ. They told you if you would plead guilty they would take care of you? A. Yes, sir.

Mr. Badgett: Plaxico and who?

The Court: Campbell and Biggs.

Re-Re-Cross Examination by Mr. Badgett.

RRX. And they told you they would take care of you if you plead guilty? A. Yes, sir.

RRX. And you would get parol d? A. Yes, sir.

Re-Re-Re-Direct Examination by Mr. Baker.

RRRQ. I will ask you if you also had a case pending in Polk County? A. Yes, sir.

RRRQ. What did anybody say, and tell who it was, they would do about that case if you would come on down here? A. Well, Plaxico said he would see that was throwed away.

RRRQ. That was taken care of up there? A. Yes, sir.

Re-Re-Re-Cross Examination by Mr. Badgett.

RRRX. What sort of case was that? A. They had a case up there about a fellow getting hit or something.

RRRX. About what? A. Some kind of a case about a fellow—felonious assault, what they had me charged with.

RRRX. You don't know anything about that either? A. No, I don't know anything about it. I knew something about it but—

RRRX. You remember giving any verbal confession to Mr. Roche? A. No, sir.

RRRX. In the presence of Earl Hubbard and Ed Simonds about this dynamiting? A. No, sir.

RRRX. You don't remember talking to them at all? A. Well, I remember talking to them.

RRRX. Roche, Mann and Plaxico, you don't remember giving them a verbal confession? A. No, sir.

RRRX. You remember these men coming in the room at the YMCA building? A. Yes, sir.

RRRX. Well, what did they say? A. Just talking about what they would do if I would do so and so.

RRRX. And you didn't give any verbal confession? A. No, sir.

RRRX. And you didn't—I will ask you first this, if you and Earl Hubbard and Ed Simonds didn't discuss it among yourselves as to each part each of you had in the dynamiting? A. No, sir.

RRRX. You didn't make a request to be placed in the city jail together so you all could get your details worked out on your story? A. No, sir, did not.

RRRX. Did you spend the night together with them? A. Well, they was all together, yes, sir.

RRRX. And the next day was when you gave the confession, wasn't it? A. Well, they had us together about two nights.

RRRX. Well, after the last night you were together the next day is when you gave the confession, was it? A. I don't think so.

RRRX. Don't think so? A. No, sir.

RRRX. When was it? A. On Monday night.

RRRX. On Monday night you gave the confession? A. I don't call it a confession.

RRRX. What night was it? A. Monday night.

RRRX. Monday night? A. When I signed the paper.

The Court: What night was it you were in the room there?

The Witness: That was on Sunday night.

Re-Re-Re-Re-Cross Examination by Mr. Baker.

RRRRX. How much did you weigh on April 24th when you were picked up, Felton? A. I couldn't say exactly, my weight runs from 165 to 170 pounds.

RRRRX. You ever remember being under 165 pounds prior to that time? A. No, sir, I do not.

(This witness was then excused.)

The witness, ARLESS DODSON, being first duly sworn, testified as follows:

Direct Examination by Mr. Thrasher.

Q. Your name is Arless Dodson? A. Yes, sir.

Q. What do you do, Mr. Dodson? A. I am jailor at the County jail.

Q. How long have you been jailor up there? A. Something over six years.

Q. Were you on duty at the County Jail the 30th of last April when a number of defendants were brought in there from Polk County by the Federal Government? A. Yes, sir.

Q. Did you have any instructions about whether they were to see anyone or not? A. Yes, we did.

Q. What were your instructions about not letting them see anyone?

Mr. Badgett: I object to that unless it is stated who gave them and under what circumstances.

The Court: He will probably develop that, go ahead.

Mr. Thrasher: As well as I remember it came from O'Conner, FBI agent.

Q. Who brought the prisoners in, do you remember? A. They was brought in from Copperhill.

Q. Do you remember what Federal Officer brought them in? A. Chief Hackney and Mr. Ricketts and Mr. Mann I believe and Mr. O'Conner, I believe.

Q. You say you did have instructions to begin with not to let them see anyone? A. Yes, sir.

Q. I will ask you to state whether or not that was revoked after a while? A. After two or possibly three days I got orders to let them see their immediate family if they should happen to come to see them.

Q. What about their lawyers? A. The lawyers could see them any time.

Q. Were the lawyers permitted to see them together or did you have instructions how they could be seen? A. Well, I think as well as I remember to let them see them one at a time.

Q. Now, Arless, during the time that you had instructions not to permit them to see anyone, do you know whether or not their lawyers came to see them and they were refused? A. No, sir.

Q. You would know about that would you? A. I think I would, yes, sir.

Q. But you don't know about it if it did happen? A. No, sir, no lawyer was ever refused to see their client.

Q. Did you ever turn Mr. Hunt and Mr. Townsend away? A. No, sir.

Q. Do you know Mr. Robert Hunt? A. Yes, sir.

Q. You don't remember ever turning him away? A. No, sir, I never did.

Q. The way the jail is arranged up there Mr. Dodson you walk in the door and there is a window on the right that opens into the bookkeeper's office? A. Yes, sir.

Q. And beyond that window a door leads into a hallway and there is a cage in there that goes into the main entrance to the jail, and ante room and from the ante room is the main entrance to the jail? A. Yes, sir.

Q. You have a desk in the ante room that is caged off? A. Yes, sir.

Q. The jailor has a desk in there? A. Yes, sir.

Q. If someone would come to the office and make application to go back in there and was refused you wouldn't know about that? A. No, sir, I wouldn't know about that.

Cross Examination by Mr. Badgett.

X. Mr. Dodson, you are the jailor up there? A. Yes, sir.

X. And directly employed by the Sheriff of this County? A. Yes, sir.

X. You receive your instructions from the Sheriff? A. Yes, sir.

X. The only way that Federal prisoners are kept is on contract? A. Yes, sir.

X. Your sheriff has a contract with the Federal Government to keep prisoners? A. Yes, sir.

X. You believe O'Conner did it, I believe you said he did? A. I don't remember, there were so many prisoners there at that particular time I can't remember.

X. You can't state on your oath who told you? A. I just can't tell you about that, there were too many there.

X. Are you stating on your oath that any attorney went there and was refused admission? A. Not that I know of.

Re-Direct Examination by Mr. Thrasher.

RQ. Did you have any special instructions from a Federal Officer there to lock five or six of them up separate from the others? A. No, sir, I did not.

(This witness was then excused.)

The witness, ROXIE CAMPBELL, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

Q. Mr. Campbell, I believe you are Chief Deputy Sheriff of Polk County? A. Yes, sir.

Q. As such deputy sheriff you had contact with certain FBI agents before any arrest was made did you not? A. I was around among them all the time up there, talked with them. I talked to all of them.

Q. Before any of these men were taken in arrest or custody? A. The Sheriff told me, I took some of them, but by orders of the Sheriff.

Q. You took some of these men in custody, did you arrest Felton Woodward? A. Yes, sir.

Q. Ed Simonds? A. Yes, sir.

Q. Earl Hubbard? A. Yes, sir.

Q. And you didn't have a warrant for the arrest of any of them did you? A. I didn't. The Sheriff gave me orders to go and get them and I did.

Q. The orders that the Sheriff gave you was to go and get them and make them available at all times so the FBI could examine them? A. He told me to bring them in to headquarters where we were stationed.

Q. So the FBI could examine them? A. He didn't tell me that, he told me to go and get them and bring them in.

Q. He didn't tell you that they wanted to talk to them and to make them available to the FBI? A. I don't remember it.

Q. You testified at the preliminary hearing didn't you? A. Yes, sir.

Q. To refresh your recollection I will ask you if you didn't testify—

Mr. Badgett: I object first on the ground that it is cross examination. This man is Mr. Baker's witness and I haven't gone into that.

The Court: What is the question?

Mr. Baker: I want to refresh his recollection as to what he testified at the preliminary hearing and see if he now remembers it.

The Court: That is in the nature of cross examination but in this proceeding I will let him go ahead. I don't think it is proper to read from a paper though. You can state it.

Mr. Baker: I can't very well refresh his recollection unless I read what he testified to before.

Mr. Badgett: Let the witness read it.

Mr. Baker: That is all right, that is perfectly all right with me.

Start right there and read another page?

Mr. Badgett: I am still entering an objection to cross examining his own witness.

The Court: Let him read and see what it says.

A. I don't see anything here that says I said anything about it, just where do you want me to read?

Mr. Baker: Start at question 54 and read that and on over on the other page.

(Reading:)

Q. They had been there for several days? A. They were there investigating.

Q. You received orders from the Sheriff as to affording opportunity for these Federal Bureau of Investigation men to talk to these various defendants? A. From the Sheriff, yes, sir.

Q. What kind of orders did you receive?' A. To bring them in, they wanted to talk to them.

Q. So the Federal Bureau of Investigation men could talk to them? A. He didn't tell me who was going to talk to them.

Q. You didn't tell—you didn't have a warrant for any of them at the time? A. No, sir, I did not.

Q. Never at any time while these men were being questioned there, was a warrant outstanding against them, either State or Federal? A. I don't know, I didn't have any.

Q. You didn't have a warrant for the arrest of any of them; you know you took them to the YMCA building and turned them over to the Federal Bureau of Investigation Agents? A. I took them there. That was headquarters.

Q. The Federal Bureau of Investigation men questioned them immediately after you brought them in? A. No, sir, some of them were there several hours before they talked to them.

Q. Did you investigate these several cases of dynamiting yourself, any of them? A. I started to one, but there were so many hills I turned back.

A. I done that all right, I turned back.

Q. Now, did you have orders from either the Sheriff of Polk County or any agent of the FBI that these defendants were not to be permitted to see any of their friends and relatives? A. I remember one time some lawyer came up from Chattanooga, I don't remember who it was, Mr. Townsend I guess was one of them, and the Sheriff was out at that time and I didn't have any orders and I told him I would rather the Sheriff would be there before he talked to him. The Sheriff was out and I didn't know where he was then.

Q. Who was with Mr. Townsend, Mr. Hunt? A. I think so, I told them at that time I was not refusing them but would rather they would see the Sheriff and I believe Mr. Townsend will bear me out in that.

Q. When was that? A. When all these arrests were being made, and the men were over at Copperhill, before they were brought to Chattanooga.

Mr. Baker: Anyhow, Mr. Campbell, Mr. Townsend and Mr. Hunt didn't get to see the prisoners, did they?

A. If they did I didn't know it.

Cross Examination by Mr. Badgett.

X. When was that? A. I don't remember the date, but a day or two before they were brought to Chattanooga.

X. Before the Federal complaint had been sworn out or after? A. I don't understand the legal procedure, but it was two or three days before they were brought to Chattanooga by the Federal officers.

The Court: Wait a minute. I have a note here of a statement that was made in your presence—

Mr. Badgett: Did Mr. Plaxico tell Felton Woodward in your presence and Sheriff Biggs's presence that they would take care, that he would take care of Felton Woodward and get him a parole if he made a statement?

A. I heard him say he would be glad to recommend a parole.

X. That was after the statement was taken, wasn't it, or before? A. I disremember, but that was said that he would be glad, either before or after, if he would come clean on it, come out clean, and told the truth, he would be glad to recommend to the Court that he be paroled.

X. Was anything said about him having influence with the Court? A. I don't know, I might have said it, probably did that these Federal men can probably do what they state they can.

X. Did Mr. Plaxico tell him that would be given in consideration of his making a statement? A. I didn't hear Mr. Plaxico talk to Woodward in person, but Plaxico told me he would be glad to recommend a parole.

X. Plaxico didn't tell Felton Woodward that in your presence? A. Not in my presence, I heard it, he told me he would be glad to recommend a parole for the boys that come clean.

X. Did you hear Mr. Plaxico tell Felton Woodward in your presence if he would make a full written con-

fession he would recommend to the Court a parole? A. I didn't hear him tell Felton that.

Re-Direct Examination by Mr. Baker.

RQ. But he did say this that if he came clean he would be glad to recommend a parole? A. He told me that.

RQ. Who was present when he made that statement? A. I don't know that anybody was, we were casually talking.

RQ. Did you tell any of these defendants what Plaxico said after that? A. Yes, sir, I told four or five in jail that night that Mr. Plaxico would be willing to recommend a parole for those boys that come clean.

(This witness was then excused.)

Mr. Baker: I think that is all on the subject at the present time. We have two witnesses that will be here later and when they come in we want to reserve the right to put them on.

The Court: The Government may have some more alleged confessions and they ought to be thrashed out. What do you think about that, and get all the preliminary matters out of the way?

Mr. Baker: We are not ready to go into the confessions of the other two at the present time. We will have our witnesses available in the morning.

The Court: I will hear the Government's proof on this, then.

Mr. Badgett: We can't tell about it until they get through.

The Court: They are through on these three, as I understand it.

Mr. Baker: That is right.

The witness, J. A. ROACH, being re-called, testified as follows:

Direct Examination by Mr. Badgett.

Q. Mr. Roach, you took the statement of John Edward Simonds? A. I did.

Q. Who else was there when the statement was taken? A. Earl Hubbard and Mr. Plaxico.

Q. Had you questioned Ed Simonds before the statement was taken? A. Yes, sir, I did.

Q. Where was that? A. At the YMCA building.

Q. When was it? A. I first questioned him on the 25th.

Q. How long did you question him then? A. About two hours in the afternoon and about two hours that evening.

Q. What time in the evening? A. The interview started about seven or seven fifteen and terminated shortly after nine o'clock.

Q. Did you ever question him at midnight or early hours of the morning? A. No, Simonds nor anybody else was questioned after 11:00 o'clock at night.

Q. Did you ever get them out of bed? A. No.

Q. Was Ed Simonds ever promised a parole by you or anybody else? A. He was not.

Q. Ever promised anything to make a statement? A. No, sir.

Q. Why did he make it? A. When we walked in there Sunday afternoon Earl Hubbard and Edward Simonds were in this room and Earl was laying down and Ed was sitting on a chair and Plaxico and I started talking

to him and talked to him about 45 minutes to an hour and didn't talk to Hubbard at all, he just sat there listening in and finally Ed says, "boys, I am just going to tell you I am guilty," so we said, "Ed, we want you to tell us just what happened, start over and give us the truth about the entire transaction." No leading questions were asked and he started from the beginning, the first meeting he attended, the arrangements made in reference to the dynamiting, his participation in it and the implication of the others and finally at the conclusion Earl Hubbard said, "Ed, since you have confessed, I will tell my part," and we said, "O. K., what did you have to do with it," and Hubbard told his implication and the two talked back and forth and Simonds said Felton Woodward knows more about this thing than anybody.

Q. Simonds said that to you? A. Yes, sir, and said if you want to bring him in I want him to know I confessed, and at that time we called Agent Mann and Woodward came in and was confronted by Simonds and he told his implication in the matter.

Q. Was that without persuasion from you? A. Simonds wanted him to know it, he was afraid he would be accused by people of double crossing some of the boys and he said he wanted to get it off his chest and let them know he had told us what had occurred.

Q. Give us the conversation there? A. Hubbard joined in and told him the same thing and Felton said well there isn't a Hell of a lot we can do about it, you have already told them and I might as well tell what I did and he went into his implication in the matter and

they all three talked back and forth and corrected each other. We had reduced Simonds' statement to writing prior to the time we called for Felton Woodward and then they requested permission to be placed in the city jail I believe, wanted to be placed in the city jail that night so they could collaborate.

Q. Was that Sunday night? A. Yes, sir.

Q. And they were placed there? A. Yes, we called Sheriff Biggs and told what occurred and he made arrangements about them going to the city jail.

Q. They requested that? A. Yes, sir.

Q. All three? A. Yes, they did, as a matter of fact we had not been to the city jail and we thought it best to stay at the YMCA and they insisted on going to the jail and they were sent there and Mr. Plaxico and I left the following morning for Chattanooga for the purpose of filing a Federal complaint.

Q. While these men were being questioned on that night, while talking to each other, did any agent of the FBI curse them? A. No, sir.

Q. Did you curse them? A. No, sir.

Q. What FBI agents were present? A. Mr. Plaxico and myself, and Mr. Mann.

Q. Did any of them ever call Ed Simonds a God damn liar or anything similar to that? A. No.

Q. Did Plaxico ever tell Ed Simonds-you are getting awfully damn bull headed since you spent one night in jail? A. That was a statement they alleged came from me.

Q. Did you tell him that? A. No, sir.

Q. Did you tell him anything similar to that? A. No, sir.

Q. Did you ever call him a liar? A. No, sir.

Q. Did Plaxico promise in your presence he would give him a parole and see what influence he could use with the Court down here if he signed a statement? A. He never made him any such statement or to any of them in my presence.

Q. Did Plaxico ever tell Ed Simonds about his bond, getting it cut low and cut to $1,000 if he would make a statement? A. No, sir.

Q. Did Bud Mann ever in your presence call Simonds a God damn liar and son-of-a-bitch and show a gun? A. No, sir.

Q. Did he ever make a motion like this? (Indicating.) A. No, he did not, Bud Mann wasn't armed.

Q. Who was doing the questioning at that time? A. Plaxico.

Q. Did Mann have anything to do with it? A. No, Mann had nothing to do, we more or less brought him in for our own protection.

Q. To hear the statements they were making? A. Yes, sir, that is correct.

Q. Do your records show what Ed Simonds told you his weight was? A. Yes, sir.

Q. Is it in this? A. It is.

Q. When you talk to a defendant do you take a personal history of them? A. Yes, sir, we do, take their description, background and personal history.

Q. You ask the man himself that do you? A. Yes, sir. The description of John Edward Simonds at that

time when we took the description was, he said he weighed 170 pounds.

Q. When was that? A. That was on the 25th I believe, shortly after—no, on the 29th.

Q. And he told you then he weighed 170 pounds? A. That is right, said he was 32, born July 18, 1908, in Cherokee City, North Carolina, 5' 8 1/2" tall, black hair, weight 170 pounds, blue eyes, short and stout build.

Q. Do you know Special Agent Lunsford? A. Yes, sir.

Q. What is his first name? A. John E.

Q. Was he on the investigation? A. Yes, sir.

Q. Was he present when Ed Simonds was questioned? A. No, sir.

Q. Was he present when Ed Simonds' confession was taken? A. No, sir, just Mr. Plaxico and myself.

Q. Did Mr. Lunsford ever question Ed Simonds? A. Not to my knowledge.

Q. Did you ever hear Lunsford call him a God damn liar and S. B? A. No.

Q. Did you ever hear Lunsford tell him he had a right to kill him? A. No, sir.

Q. Were you present when Felton Woodward was questioned? A. I was.

Q. When was that, the first time? A. I first questioned him on the 25th and again on the 28th.

Q. How long did you question him on the 25th? A About two hours.

Q. How long the 28th? A. Only questioned him 45 minutes.

Q. Had he ever made an admission or confession prior to the time he was confronted with Earl Hubbard? A. He had not.

Q. Is that when he first gave a confession? A. That is correct.

Q. When Earl Hubbard told him he wanted him to know he told it all? A. And Ed Simonds.

Q. Were you present when the written statement of Felton Woodward was taken? A. No, sir.

Q. Felton Woodward made a verbal confession and have you read the written confession? A. I have.

Q. I wish you would state what, if any, difference there is between the verbal statement he gave and the written? A. There is no material difference only his statement is given more in detail, the agents went into the location of places, for example, as to where Anderson's office was located and things that weren't gone into that night. The actual details of the dynamiting and his implication are practically the same.

Q. Did Bud Mann ever question him with you that you know of? A. Yes, he questioned him with me on the 25th I believe.

Q. At that time he didn't make a statement about his implication did he? A. No, sir.

Q. Did Bud Mann call him a God damn liar in the presence of Sheriff Biggs? A. No, he did not.

Q. Did any other agent in your presence ever call him that that you know of when you were there? A. No, sir.

Q. Or anything similar to that? A. No, sir.

Q. Did you ever hear any agent curse him? A. No, sir.

Q. While you were there questioning Felton Woodward did you or any other agent make such statement that we came here to break the strike and we are going to break the strike? A. No, sir, we were not interested in the strike whatsoever.

Q. Did you tell Felton Woodward that you were only concerned as to M. C. Anderson, that he was the only one you wanted? A. No, sir, we were interested in all of them.

Q. Do you know whether Hevron questioned Felton Woodward or not? A. I believe he was present when it was reduced to writing.

Q. Did Morgan ever question him? A. Not to my knowledge.

Q. Did Morgan ever state in your presence to Felton Woodward that we have a place in Atlanta where you can be made to talk? A. No, sir.

Q. Were you present when Plaxico questioned Woodward? A. Yes, sir, on the 28th.

Q. Did Plaxico make any statement there that he would take care of a city charge in Copperhill pending against him if he would confess, or a state charge? A. No, sir.

Q. Did he make a statement he would get him a parole or pardon? A. No, sir, Mr. Plaxico knows the difference between parole and probation and he didn't make such a statement.

Q. Did he make any such statement? A. Not to my knowledge, no, sir.

Q. Did he or any other agent in your presence ever threaten Earl Hubbard? A. No, sir.

Q. Ever promise him anything? A. No, sir.

Q. Ever call him any names, any curse names? A. Did not.

Q. Any other agent? A. No, sir.

Cross Examination by Mr. Baker.

X. Now, that record you have, Mr. Roach, you say that was made on the 29th of April? A. Yes, sir, as I recall all these descriptions were taken on the 29th and 30th.

X. That description was taken, was it not, Mr. Roach, after he had signed a statement? In other words you wouldn't take that sort of description from a man until you knew you were going to charge him with some offense would you? A. Yes, we often take descriptions of individuals who are prospects, or suspects, they don't necessarily have to become subjects.

X. That is not the ordinary procedure is it? A. Yes, sir, the procedure if the indication is that they are going to become what we call subjects, or what you call defendants.

X. How many of these defendants did you talk to? A. I talked to Mr. Anderson.

X. The first time you talked to a defendant was on the 25th or 26th? A. Which defendant?

X. Any defendant? A. On the 24th in the afternoon, at McKaysville, Georgia.

X. Who was that? A. Clyde Huffman.

X. What time did you go to talk to him? A. I would say about two o'clock.

X. How long did you talk to him? A. About two hours.

X. Where were you after four o'clock that evening, who was with you? A. Mr. Mann.

X. Where did you go from there? A. It has been eight or nine months and I don't know.

X. Did you talk to anybody else? A. Not that day.

X. How about the 25th, who did you talk to? A. Hubbard, Woodward and Simonds?

X. Did you talk to them separately? A. Yes, sir.

X. When did you start talking to them? A. Sometime in the afternoon.

X. What did you do in the morning? A. It is hard for me to say definitely what I did in the morning of the 25th.

X. Did you talk to the defendants that morning? A. No, sir.

X. You talked to each one of them an hour and a half or two hours? A. Yes, sir.

X. That consumed the entire afternoon? A. That is correct.

X. You talked to three men? A. Yes, sir.

X. Who was with you? A. Agent Mann was with me in the afternoon.

X. The entire afternoon? A. Yes, sir, and then that evening I talked to Simonds and Hubbard, I believe.

X. That was in the evening? A. On the 25th, yes, sir.

X. How long did you talk to them? A. I would say an hour and a half to two hours.

X. Who was with you when you talked to them on the night of the 25th? A. Mr. Plaxico and myself.

X. Where was Agent Mann? A. I don't know, I left him at the hotel.

X. You don't know who he talked to in the meantime? A. No, sir, I do not.

X. What time did you get through with your examination on the night of the 25th? A. I would say shortly before nine.

X. Which one did you talk to last? A. I can't tell you.

X. You don't know who was the last one? A. No, sir.

X. Did you look at your watch to see if it was nine? A. No, but that was the general time we stopped interviewing around nine and returned to the Hotel and we have reports to get off and send in to the office.

X. Do you know what any other Agent did except Plaxico and Mann during the day and night of the 25th? A. All the Agents weren't there on the 25th. These agents came in on different days.

X. What agents were there on the 25th? A. Mr. Mann, Mr. Plaxico and myself and probably Hevron. Hevron came back to Court at Chattanooga.

X. How about McCabe? A. He didn't get there until, I believe, the 27th he and Morgan came in together.

X. When did Lunsford get there? A. I believe Lunsford and Whitten both arrived the day before McCabe and Morgan, they came in about three o'clock in the morning and Whitten and Lunsford the evening before that.

X. Who did you talk to on the morning of the 26th? A. I don't believe I talked to anybody all day the 26th.

X. Didn't talk to anybody at all? A. I don't recall.

X. What agent did you work with on that day? A. Either Mr. Mann or Mr. Plaxico.

X. You don't know which one you were with? A. No, I don't.

X. Did you talk to anybody the night of the 26th? A. No, the next day, the next party I recall talking to was on the 27th.

X. That was what day, Saturday?

The Court: The 27th of April was Saturday.

Mr. Baker: Who did you talk to on the 27th? A. Clint Huffman about an hour and a half.

X. What time of day? A. I believe in the morning.

X. Who was with you, was anyone with you? A. Yes, I think Mr. Plaxico was with me.

X. Did you talk to him at McKaysville? A. No, sir, in the YMCA building. Clyde was at McKaysville.

X. Who else did you talk to the morning of the 27th? A. I don't believe I talked to any of the rest of the defendants.

X. Were you with any other agent the rest of the morning of the 27th? A. That is hard to say, we visited the dynamiting scenes. I was either with Mr. Mann, Sheriff Biggs or Mr. Plaxico.

X. Who did you talk to on the afternoon of the 27th? A. Who? I don't recall talking to any of the defendants other than Clint Huffman.

X. Did you talk to them on the night of the 27th? A. No, sir.

X. What did you do the afternoon of the 27th? A. I don't exactly recall.

X. Were you in the YMCA where these people were being questioned? A. In and out.

X. Who did you question on Sunday? A. Questioned Simonds, Woodward and Hubbard.

X. That was Sunday night was it not? A. That is right.

X. Did you question anybody before that time Sunday? A. I believe Mr. Plaxico and I talked to Simonds Sunday afternoon about an hour and a half or two hours.

X. How long did you talk to the three of them Sunday night? A. 45 minutes to an hour—I will make a correction there, we talked to Hubbard and Simonds about an hour after he confessed and I reduced his statement to writing.

X. Reduced whose statement? A. Simonds'.

X. That was reduced to writing on Sunday night? A. Yes, sir, and then we sent for Woodward and talked with Woodward and Hubbard and Simonds for another 45 minutes. In all I think "Plax" and I went there about five o'clock and broke up at 7:30 or quarter to eight.

X. In all this investigation that is the only ones of these defendants you talked to and the ones you have a record of here? A. That is right.

X. You talked to none of the others? A. I believe I talked to eight out of 21. I talked to Shillings.

X. You have placed yourself up there at the YMCA — and other places a greater part of the time have you not? A. What?

X. You were away from the YMCA a great part of the time? A. That is correct.

X. On the outside and investigating? A. That is right.

X. What is the customary procedure in making an investigation of this kind? Is it customary for one agent to interview a man for a while and go off and investigate some thing else and another agent then question him? A. That is not the usual procedure, Mr. Baker. An agent starts to question a man and gets his background and goes into the details of the case and if he should get up and leave and another agent comes in after that he would have to go over the same ground work and it would be useless repetition.

X. You do know that was done in this case do you not? A. What do you mean?

X. You only talked to Ed Simonds twice? A. Yes, sir.

X. You do know other agents talked to him several times do you not? A. I know Simonds had been talked to by Mr. Mann and Mr. Plaxico and myself definitely.

X. Four of you? A. Three of us, Mr. Mann, Mr. Plaxico and myself.

X. Do you know whether any of the other agents examined him or not? A. I don't know definitely. He was probably questioned by other agents.

X. Do you know how many times he was questioned by other agents? A. No, I don't state definitely that he was questioned by other agents.

X. You never told him he was lying did you, Ed Simonds? A. No sir, I brought back a statement of his wife that was altogether different from his.

X. You never used a word out of the way to him at all? A. No, sir.

X. Didn't hear anybody else use one? A. No, sir.

X. You never told him what he was telling wasn't true? A. No, I never put it quite that way Mr. Baker. I took what he told me and then compared it with what somebody else told me about the same transaction and he could draw his own conclusion that somebody was lying.

X. Do you know whether or not Agent Mann at the County Jail asked that these men's bonds be fixed at $1,000 each, Simonds and Woodward? A. Who?

X. Mr. Mann? A. If he did it was without my knowledge.

X. You were not at the county jail? A. No, sir, I didn't go there at all.

X. It was generally understood among all you agents, including Mr. Plaxico, if these men would sign a confession they would be granted a parole on your recommendation if you had authority to grant it? A. We don't have any such authority and no such promises would be made. The agents have been in the business too long.

X. You were as a matter of fact willing to recommend that they be granted a parole or probation was you not? A. I was never willing to do any such thing.

X. Didn't you and Mr. Plaxico discuss it and he tell you he thought they ought to be placed on probation? A. He never mentioned that to me.

X. Do you know whether he mentioned it to Mr. Campbell or not? A. I do not.

Mr. Badgett: Mr. Roach, I want you to tell, or give us a list of every agent of the Federal Bureau of Investigation that investigated that case there?

The Witness: John E. Lunsford, E. M. Hevron, R. T. Mann, H. E. Plaxico, G. A. Whitten, N. H. McCabe, R. L. Morgan and myself.

Mr. Baker: Did Mr. O'Conner have anything to do with the investigation?

A. At that time he was the resident agent at Chattanooga, Tennessee, and he had nothing to do with the actual investigation.

X. He didn't participate in the investigation in the Basin? A. No, sir.

X. He did assist some after the prisoners were brought to Chattanooga? A. When the prisoners were brought to Chattanooga I was in Copperhill and I don't know what Mr. O'Conner did while I was up there.

(This witness was then excused).

The witness, H. E. PLAXICO, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

Q. State your name, please? A. H. E. Plaxico.

Q. Are you an officer of any kind? A. Yes, sir, I am Special Agent for the Federal Bureau of Investigation.

Q. Where are you now stationed? A. In Washington, D. C.

Q. Where were you stationed in 1940? Early part? A. Up until July I was Special Agent in charge of the Knoxville Field Division, at Knoxville.

Q. In March and April, 1940, were you Special Agent in charge of the Knoxville Division? A. Yes, sir.

Q. Mr. Plaxico, as such Special Agent in charge, did you make an investigation of the dynamiting of power lines in Polk County, Tennessee, and Fannin County, Georgia?. A. I did.

Q. Do you know Felton Woodward? A. Yes sir, I know him.

Q. You know Ed Simonds? A. Yes, sir.

Q. And Earl Hubbard? A. Yes, sir.

Q. Did you have any part in the questioning of these men relative to this dynamiting? A. I did.

Q. What part did you have? A. Well, I questioned Ed Simonds on one or two occasions.

Q. When were they—when was the first one? A. The first occasion I think was the second day after I arrived in Copperhill—that was on the 25th of April. The second occasion was Sunday afternoon, which was April 28th.

Q. This is Ed Simonds? A. Yes, sir.

Q. How long did you question him the first time? A. About forty-five minutes.

Q. The second time? A. About an hour—little over an hour.

Q. Who was present when you questioned him those times? A. On the first occasion Special Agent Mann and Roche, and on the second occasion Special Agent Roche and myself, and then Special Agent Mann came in later.

Q. Mr. Plaxico, I will ask you whether or not you ever cursed Ed Simonds in any way? A. No sir, I did not.

Q. Specifically did you ever call him a damn liar or anything similar to that? A. No, sir, I did not.

Q. I will ask you whether or not Ed Simonds was questioned two hours on the first occasion when he was questioned? A. You say was he questioned?

Q. Was he questioned two hours on the first occasion when he was questioned? A. Not by me.

Q. By anybody to your knowledge? A. No, sir, I wasn't down there, you see, until the 25th.

Q. After you arrived you were in charge, were you not? A. Yes, sir.

Q. And before you arrived Mr. Roche was in charge? A. That is right.

Q. Did you ever question Ed Simonds at midnight? A. No, sir.

Q. Any other agent to your knowledge? A. No, sir.

Q. Did you ever instruct any agent to question him at midnight? A. No, sir.

Q. Did you ever request Agent Roche, who was under you, to question him at midnight, or have him questioned? A. No, sir.

Q. Did Ed Simonds ever ask you for a lawyer? A. No, sir.

Q. Did you ever say to him "it is—"it will be too bad for you if you don't talk"—Ed Simonds? A. No, sir.

Q. Did you ever threaten him with a term in the penitentiary of any kind? A. No, sir.

Q. Did you ever tell him "you've got awful damn smart since you have spent one night in jail?" A. No, sir.

Q. Was anything ever said by Ed Simonds with respect to a lawyer? A. Not in my presence.

Q. Did you ever tell him it was too late, he didn't need a lawyer, or anything to that effect? A. No, sir.

Q. I will ask you specifically, Mr. Plaxico, did you ever tell Ed Simonds that you had influence with the Judge of the District Court, and if he would talk you would get his time cut for him? A. No, sir, I did not.

Q. Did you ever say anything to that effect or anything similar to that? A. No, sir.

Q. Did you ever offer him any promises or did you ever threaten him to make a statement? A. I did not.

Q. Did any other agent do it in your presence? A. No, sir.

Q. With your knowledge? A. No, sir.

Q. Did you ever abuse him in any way? A. No sir.

Q. I want you to just tell the Court the relation between the FBI and Ed Simonds? A. Well, you mean —how much you want me to go into that, Mr. Badgett?

Q. Well, just tell how you questioned him and what he said about the FBI and anything of that nature? A. Well, on the first occasion we had information involving Ed Simonds, we went in there and talked to him very plainly about what we had, and pointed out to him the information we had, and he denied everything so we went on about our business; and the second occasion, that was Sunday afternoon we went over the entire case with him, and pointed out the discrepancies in his story and the information we had developed on investigation, which knocked down his alibi, and out of a clear sky he said "well, I want to tell you I am guilty."

Q. Did you ever tell him you knew what the truth was and he was not telling the truth or was lying? A. No, sir, I never told him he was lying.

Q. How did you break down the story he was telling, Mr. Plaxico—how did you verify that? A. By investigation.

Q. Then you would disclose that to him? A. Yes, sir.

Q. And what would he say then? A. Sometimes he would just smile and sometimes he would still say he was right.

Q. Did Simonds ever say anything to you about the treatment the FBI gave him? A. Yes, sir.

Q. What did he say? A. He said it was the finest bunch of men he had ever come in contact with, he would like to be a Special Agent himself.

Q. He said that? A. Yes, sir.

Q. Did he ask you what qualifications were required for Special Agents? A. Yes, sir, he said he thought he would go ahead and study and try to be a special agent, he never received finer treatment in his life.

Q. Did he say anything about the food? A. He said it was the best food he had had since he had been on strike.

Q. Where did he get it? A. YMCA.

Q. Did you ever deny him a cigarette? A. No, sir.

Q. Ever knock a cigarette out of his hand? A. No, sir.

Q. Or straighten him up in his chair, or abuse him in any way? A. No, sir.

Q. Did any other agent to your knowledge? A. No, sir.

Q. Were you present when Felton Woodward was questioned? A. Yes, sir.

Q. Were you present when he gave a verbal confession? A. Yes, sir.

Q. In whose presence was the verbal confession given? A. Special Agents, Roche, Mann and Earl Hubbard and Simonds.

Q. You know how it happened those men were present? A. I beg your pardon?

Q. You know how it happened those defendants were present besides Felton Woodward? A. When Agent Roche and myself were questioning Simonds Sunday afternoon, then after he told us he was guilty and wanted to tell us the entire part he played in it, he asked that Felton Woodward be brought into the room and he took the initiative. We didn't question him at all.

Q. Who took the initiative? A. Ed Simonds questioned him.

Q. Who took the initiative? A. Ed Simonds.

Q. What do you mean by that, he took the initiative —tell in your own words what happened?

The Court: The court would know what he meant by that. He assumed the leadership?

The Witness: That is right. It was not a matter of us getting a written statement or admission from Felton Woodward at all. It was Ed Simonds pointing out to him the things he had told him to do and the things he knew he was involved in.

Mr. Badgett: Were you present when Ed Simonds asked that Felton be brought in?

A. Yes, sir.

Q. What was his statement? A. He said bring Felton Woodward in because he knows a lot more about this than I do.

Q. What did Felton say when Ed Simonds started telling him about all this? A. Well, finally he started talking to Ed in our presence.

Q. Have you read his written statement? A. Yes, sir.

Q. I will ask you if that varies materially from the oral statement he made? A. It is much more in detail.

Q. Does it vary— A. As to pertinent parts.

Q. It does vary? A. I say it jibs with the information he gave us as to the pertinent part.

Q. When was it the verbal confession was given? A. Late Sunday afternoon.

Q. When was his written statement taken? A. Monday morning—it was started.

Q. How many times did you question Felton Woodward—how many different occasions? A. I would say on about two occasions, Mr. Badgett.

Q. Two occasions? A. About two or three—I can't recall.

Q. What was the most at any one time he was questioned there by you? A. Not over a half hour by me.

Q. Who was present when the written confession was taken? A. I think I instructed Special Agent Hevrin and Mann and McCabe to take the written statement.

Q. And of those three Mann was the only one present at the time the verbal confession was given? A. That is right.

Q. When this man gave a verbal confession, did you hear Agent Mann call him a God damn liar, or anything like that? A. No, sir, there was no occasion to.

Q. Did you ever hear any other agent call him a damn liar or anything similar to that? A. No, sir.

Q. Did you ever hear any agent, or did you yourself tell Felton Woodward that you came to Copperhill for the express purpose of breaking that strike, and said that it only led to killings, and that you were going to break the strike, and you were there primarily after M. C. Anderson? A. No, sir, I did not. I told him we are not interested in the strike in any way—that we were down there on a violation of a Federal Statute and that was all we were interested in.

Q. Was Agent Morgan ever in on any of these questionings to your knowledge of Felton Woodward? A. Yes, sir, I think he was.

Q. In your presence? A. No, sir.

Q. Not in your presence? A. No, sir. He had to leave Sunday morning. Agent Morgan had to go to Detroit prior to any statements that were taken, but he had interviewed them on several occasions.

Q. Did you, Mr. Plaxico, ever tell Felton Woodward that you could get him a parole if he would sign a written confession or made a verbal statement? A. No, sir, Parole?

Q. Yes? A. No, sir.

Q. Did you ever promise him anything for his confession or written statement? A. No, sir.

Q. Or did any of these other FBI agents in your presence? A. No, sir.

Q. Or to your knowledge? A. No, sir.

Q. Did you ever tell Felton Woodward that if he would sign a written statement or confession that you would see that a State charge pending against him over there in Polk County for felonious assault would be dismissed? A. No, sir.

Q. Did you ever tell him in the presence of Campbell—Roxie Campbell and Sheriff Biggs of Polk County that you would take care of him if he made a written confession or statement, and that you would come down and see that he got a parole? A. No, sir.

Q. Did you ever tell him that because of your great influence with the Court that you would see that he got off light or got a parole if he made a statement? A. No, sir.

Q. Did you ever tell any of these men that? A. No, sir.

Q. Any of the defendants? A. No, sir, never told anybody that in my life.

Q. Were you present during the questioning at any time of Earl Hubbard? A. Yes, sir.

Q. When was the first time Hubbard was questioned by you? A. The 25th is the first day I got to Copperhill.

Q. 25th of April? A. Yes, sir.

Q. 1940? A. 1940.

Q. How long did you question him on that occasion? A. About an hour or little longer probably.

Q. Did you question him any after that? A. For a very short time after.

Q. How long? A. Ten or fifteen minutes.

Q. Were you present when he gave his statement? A. His written statement?

Q. Yes? A. No, sir.

Q. Were you present when he made any confession? A. Yes, sir.

Q. When was that? A. That was Sunday night.

Q. Who was present when he gave his written confession? A. Agents Roche, Mann, and Earl Hubbard—no I don't mean Earl Hubbard, of course, he was present, but Felton Woodward and Ed Simonds and myself.

Q. And have you seen the written confession of Earl Hubbard? A. Yes, sir.

Q. I will ask you to state whether or not that varies materially from the verbal statement that he made? A. No, sir, it does not.

Q. Or that he gave in your presence. Who was he talking to when he was making his verbal confession? A. Well, Earl Hubbard and Felton Woodward and Simonds were all talking together. They were pointing out to each other what they had done and correcting each other about some points at times, and that is when he made his admission as to his participation in it.

Q. And you people were listening—you FBI men? A. Yes, sir.

Q. You remember any special occasion when the Green boys were mentioned at that verbal confession?

A. I remember something that Ed said, that the two Green boys had run off from the dynamiting.

Q. Was any further discussion had about it?

Mr. Baker: Well, if the Court please, that is going into the method and manner—has nothing to do with this.

The Court: What is the point in that, General?

Mr. Badgett: I was trying to show the spontaneity of it. The other agents will testify these boys were laughing about it, about Tate and Mutt Green getting scared and running, and falling down a hill trying to get away from the dynamiting.

Mr. Baker: That would not have any bearing on this.

The Court: I think it would have a bearing on the attitude of the parties at the time.

Mr. Badgett: I think the spontaneity of it would.

Q. You remember anything about that? A. Yes.

The Court: Not too much detail.

Mr. Baker: Well, we except.

Mr. Badgett:

A. Ed said they were all pretty scared when they were going after the dynamite, and the two Green boys kept asking him did he hear something, and he said, no, and finally he said he was certain he heard something, and Ed said "that is just your heart thumping."

Q. Did they laugh about it? A. Yes, and then when they fell in a ditch there was a mad scramble because Ed thought it was the law.

Mr. Baker: That is going into a bunch of detail—

The Court: The fact he is testifying to is not competent, but it reflects on their demeanor. It is the demeanor of the parties that is competent.

Mr. Baker: Except.

Mr. Badgett: Mr. Plaxico, while you were questioning, rather while Earl Hubbard was making that statement in the presence of those other defendants, and others, and Mr. Roche, did he have his glasses on?

A. Yes, sir.

Q. Did any of you agents, that you know of—any FBI agents that you know of, or you yourself ever take Earl Hubbard's glasses away from him and tell him he couldn't wear them? A. No, sir, not in my presence.

Q. Mr. Plaxico, did you ever see Earl Hubbard, when you were questioning him, smoke a cigarette? A. The first day almost continuously.

Q. What do you mean almost continuously? A. He just rolled one right after the other.

Q. Was he smoking rolled cigarettes? A. Yes, sir.

Q. Did you snatch a cigarette out of his hand? A. No, sir.

Q. Did any other agent to your knowledge snatch a cigarette out of his hand and tell him he couldn't have it? A. No, sir.

Q. Did you give him a cigarette? A. Yes, sir.

Q. On how many occasions—few or many? A. Well, on several occasions.

Q. Did you ever use any profanity in talking to him? A. No, sir.

Q. Ever call him any kind of liar? A. No, sir.

Q. Did you ever deny to him he could see his relatives? A. No, sir, on the contrary.

Q. Do you know he did see his relatives? A. Yes, sir.

Q. On what occasion? A. On Tuesday morning right before he was brought over to Chattanooga by the Marshal he was taken out to his home.

Q. Taken out to see his wife, wasn't he? A. Yes, sir.

Q. At your direction—at the FBI's direction? A. Yes, sir.

Q. Did he ever make any statement to you about the manner in which he had been treated? A. Yes, sir.

Q. What did he say? A. He said he had never been treated nicer in his life, and I recall when they were leaving with him, Felton Woodward had tears in his eyes and he shook my hand and told me he wanted to thank me and the other agents down there for the way he had been treated.

Q. That Felton Woodward? A. Yes, sir—not Felton Woodward, Earl Hubbard.

Q. Mr. Plaxico, what written statements did you take? A. I only participated in one.

Q. Which one was that? A. Ed Simonds.

Q. When any of these men were questioned I will ask you to state what, if anything, you told them before you asked them to make the statement? A. Well, as always, Mr. Badgett, we told them they did not have to make a statement—

Q. I am talking about this particular occasion? A. On this particular occasion they did not have to make a

statement, and anything they said would be, or could be used in court against them.

Q. Did you tell them who you were? A. Yes, sir.

Q. Who did you tell them you were? A. Special Agent in charge at Knoxville for the FBI.

Q. Did the other agents introduce themselves? A. Yes, sir.

Q. Mr. Plaxico, you as an FBI agent—what would happen to you as an FBI agent—

Mr. Townsend: We object to that.

The Court: Let him get it out first. Go ahead.

Mr. Badgett: If your Director had knowledge or even suspected that you had in any way intimidated a defendant or promised him anything for a statement or confession—

Mr. Townsend: We object on the ground that it is irrelevant and immaterial and has no bearing on the issues.

The Court: Let him answer.

The Witness: It means immediate dismissal.

Q. Means your dismissal? A. Yes, sir.

Q. Or any other agent's dismissal? A. Yes, sir.

Q. Do you know of the defendants—strike it.

The Court: It perhaps is true the Court might be familiar with those regulations of the Department.

Cross Examination by Mr. Baker.

X. Mr. Plaxico, when did you go to Copperhill? A. On the night of the 24th.

X. 24th of April? A. Yes, sir.

X. You met a group of other agents at Copperhill didn't you? A. There were two other agents there at that time.

X. At the New York Hotel? A. Yes, sir.

X. Roche and Mann were there when you got there? A. Yes, sir.

X. On the morning of the 25th other agents came in? A. I think two came in on the 25th, in the morning, and probably one on the afternoon of the 25th, and one on the 26th.

X. All right. You had an organization meeting at the New York Hotel—what time was the first one? A. The first one was about noon on the 25th, I think.

X. Who was present at that meeting? A. There was Agents Mann and Roche and Lunsford and Whitten.

X. Sheriff Biggs there? A. No, sir.

X. All right, when did you have the next meeting at the New York Hotel? A. I think it was after the arrival of the other agents.

X. Was Sheriff Biggs present at that meeting? A. No, sir.

X. At which meeting you had was he present—did you have a meeting where he was present? A. No, sir—at our organization meetings only our own men were present.

X. Well, you contacted Sheriff Biggs when you first came in, did you not? A. That is right.

X. Contacted his Chief Deputy, Mr. Campbell? A. Yes, sir.

X. And talked to them about this case? A. Yes, sir.

X. You didn't know anything about the case, of course, when you came in? A. Oh, yes, I did.

X. Well, you had previously had some reports from Agent Mann and Agent Roche? A. Yes, sir.

X. But you told Sheriff Biggs to make available to you certain people, did you not? A. No, sir, I did not.

X. How did you get in contact with these defendants then? A. There were three or four already in the Sheriff's custody when I arrived at Copperhill.

X. Now, in these organization meetings you would have, Mr. Plaxico, what sort of plans did you make at those meetings?

Mr. Frazier: We object to that—what sort of plans the FBI made to investigate the case.

The Court: Well, I think that question is a little general—could ask him about a special plan.

Mr. Baker: Well, did you discuss among yourselves the manner and method you were going to proceed in the investigation?

A. We always do that, Mr. Baker. I mean if we have no plan at that time, but to be specific at that first and second meeting we went over the case as to what had happened up until that time with the new agents.

X. What had happened? A. Yes, sir—I mean as to the dynamitings—where they had happened, the time they had happened, so they would be thoroughly familiar with the pertinent data in connection with it.

X. Did you tell them any person who was under suspicion? A. I don't recall whether I did or not.

X. Now, getting back to Sheriff Biggs, how did you manage to contact these defendants? Where did you find

them? A. Well, as I said, Mr. Baker, there was three or four already in the custody of the Sheriff.

X. Did you order them arrested? A. No, sir, I did not.

X. You know how the Sheriff happened to arrest them? A. No, I do not.

X. All right. There was another group in the custody of the Sheriff in a few days, was there not? A. He told me at that time he was also looking for several other individuals.

X. All right. What was his purpose in arresting those individuals, Mr. Plaxico?

Mr. Badgett: Your Honor, he couldn't possibly know that.

Mr. Baker: If he does know it it is competent.

The Court: Well, if you know, it is competent.

The Witness: He had told me, Mr. Baker, he had some kind of local charge against them.

X. Had some kind of what? A. A local charge against them.

X. Had a local charge against them? A. Yes, sir.

X. And you thought he had a local charge against them? A. Well, I didn't doubt his word.

X. Well, how did you manage to talk to these men, Mr. Plaxico—where did you find them? A. I found them at the YMCA.

X. Well, how did they get to the YMCA? A. Well, they were in custody of the Sheriff.

X. Did the Sheriff bring them there? A. I don't know whether he did or not.

X. You don't know how they got there? A. No, sir.

X. What happened to them after you questioned one of them? A. I left them right there.

X. Well, if you wanted to question one again how did you get him over to where you wanted to question him the second time? A. I understood they were staying at the YMCA.

X. Mr. Plaxico, don't you know all of those men stayed at the city jail? A. No, sir, I do not.

X. You know some of them were? A. I said at that time the ones I was talking to were staying at the YMCA.

X. And some were staying at the city jail. If a prisoner was at the city jail, how did you get him over to the YMCA to talk to him? A. By asking Sheriff Biggs or one of his deputies to bring him over there, if he was over there or wherever he was.

X. In other words, you told the Sheriff to go and bring you whoever you wished to question? A. I don't know I used those words, I said we would like to interview so and so.

X. You would like to interview so and so? A. Yes, sir.

X. I believe you say, to make the record absolutely clear, Mr. Plaxico, that Sheriff Biggs was not present at that organization meeting on the 25th, at the New York Hotel? A. That is right.

X. You are absolutely positive about that? A. I am positive.

X. You are absolutely positive also that Roxie Campbell was not there? A. Yes, sir, I am positive, Mr. Baker, that no outside person was present at those meetings.

X. Agent John A. Roche was there, was he, at that meeting? A. Yes, sir.

X. And Agent Mann was there? A. Yes, sir.

X. That is the first meeting I am speaking of? A. Yes, sir.

The Court: Was there a meeting before you got there, or do you know?

The Witness: No, sir.

The Court: You know whether they met before you got there?

The Witness: No, sir. Immediately upon arrival I called a meeting of the agents.

Mr. Baker: That was on the 25th, was it not?

A. That was Thursday.

X. That is right. A. Because I arrived there about 7:30 Wednesday night.

X. You arrived on the evening of the 24th? A. Wednesday.

X. This meeting was on the morning of the 25th, which was Thursday? A. Yes, sir, I think that is true.

X. You didn't know at any time whether these defendants that you were questioning were charged with any offense or not, did you? A. No, sir, I didn't.

X. Did you ask anybody whether they were or not? A. As I stated Sheriff Biggs had told me he had several on a local charge.

X. You do know at any time you wanted to see or talk to one of them, day or night, that man was available so you could talk to him? A. Well, on each occasion we wanted to interview them they were available.

X. And you interviewed all these men at the YMCA building? A. Yes, sir.

X. You knew they were or that there was a strike on there, did you not, Mr. Plaxico? A. Yes, sir, I knew it.

X. And you knew that YMCA was a building used to house company guards? A. Deputy Sheriffs.

X. Deputy Sheriffs that were guarding company property? A. I don't know what their duties were.

X. Well, you knew there were eighteen or twenty or twenty-five deputy sheriffs headquartered there in the YMCA? A. Yes, sir.

X. And you established your headquarters there in that building in the midst of that nest of deputy sheriffs to question these defendants? A. I did not, no, sir.

X. Well, did you question them? A. I questioned them, Mr. Baker, but I didn't establish my headquarters there.

X. And these deputy sheriffs would walk back and forth through that YMCA building all day, would they not, and all night, at all hours of the day and night? A. Well, I can only say as to the daytime, I was not there at night.

X. You were not there at night but during the day they walked back and forth? A. I saw several.

X. They were all armed? A. I recall seeing—

X. With shot guns, rifles and pistols? A. No, sir, just side arms.

X. And they lived there in that building? A. So I understood, yes, sir.

X. And you knew, as you say, there was a strike on and you knew these men you had questioning were all strikers? A. We found that out, yes, sir.

X. And you knew they were bitter enemies of these deputy sheriffs you saw going back and forth?

Mr. Badgett: I object to that and ask that it be stricken from the record.

The Court: Let's see what he says.

Mr. Baker:

A. To the contrary, Mr. Baker.

X. On, you thought these company guards or deputy sheriffs were friends of the strikers? A. Well, I will just explain that this way—that several of them commented very favorably on several of the deputy sheriffs and said anything they said they would believe in, other than that I don't know what their relation was.

X. Your idea then is these strikers were friendly with the deputy sheriffs? A. Yes, sir, some of them.

X. With some of them? A. Yes, sir.

X. And they were glad to be questioned there in the presence of some of these deputy sheriffs? A. They intimated so.

X. They told you they would like to be questioned there where these deputy sheriffs were? A. Well, after making their admissions they said they were glad to get it off their mind.

X. They went around then and shook hands with all these deputy sheriffs and patted them on the back and said they were glad they were there? A. I don't know that they patted them on the back but they shook hands with some of them.

X. When was the first time you talked to the defendant Ed Simonds? A. It was on the afternoon of the 25th.

X. I think I will ask you this, Mr. Plaxico—you got there and had this organization meeting on the morning of the 25th. After the organization meeting where did you go? A. I think we had lunch.

X. Had lunch? You didn't question anybody or talk to anybody in the morning? A. I don't think so.

X. Where did you go immediately after lunch? A. To the YMCA building, I think, Mr. Baker.

X. Who did you talk to when you got there? A. I think it was Felton Woodward—I mean Earl Hubbard.

X. How long did you talk to him? A. Slightly over an hour.

X. Something over an hour? A. Yes, sir.

X. Could have been as much as two hours? A. Could be but I don't think it was that long.

X. You don't think it was but it could have been as much as two hours? A. Yes, sir.

X. What time would that be when you got through there? A. Probably 2:30.

X. All right, what did you do then? A. I am not certain but I think Special Agent Roche and myself and a deputy sheriff went over into Georgia.

X. Right there, when you first questioned Earl Hubbard that afternoon, who was present when you questioned him? A. Agent Roche, Mann, and I think—I am positive Sheriff Biggs sat in there for awhile.

X. Sheriff Biggs was there? A. Yes, sir.

X. Then immediately after that you think you went over in Georgia; who went with you over there? A. Spe-

cial Agent Roche and a deputy sheriff, I don't know his name.

X. How long did you stay in Georgia? A. About an hour and a half, I think, right across the line.

X. Then when you came back where did you go? A. To the New York Hotel.

X. What time was it then? A. Must have been about 5:30.

X. Where did you go after that? A. I think we had a short meeting there at the hotel with other agents that had arrived.

X. Who was present at that meeting? A. Agents Roche, Mann, McCabe, Whitten and Lunsford and Morgan.

X. Sheriff Biggs there? A. No, sir.

X. Roxie Campbell there? A. No, sir.

X. All right, what happened after that—where did you go? A. I—

Mr. Badgett: I can't see where that is competent on this question, asking him where he went. The only question is what these defendants did.

The Court: Yes, that is too much detail for this investigation.

Mr. Baker: We take the position these defendants were questioned in relays—they claim they were questioned hours at a time, and that they questioned the defendant Earl Hubbard over a period of nine hours, and so far no agent says he was questioned over an hour and a half. Now, we want to question each of these agents and see who did question them, and this is the only way I can do it.

Mr. Badgett: He can ask him whether or not he did do that—he don't have to ask him every minute where he was.

Mr. Baker: I have a right to cross-examine him to get that information.

The Court: I have no objection at all only the element of time.

Mr. Baker: I will make it as short as possible.

The Court: All right, make it as short as you can.

Mr. Baker: Did you question anybody on the night of the 25th?

A. No, sir.

X. Where were you, at the Hotel? A. Part of the time and the rest of the time was out making investigation.

X. Outside? A. Yes, sir.

X. On the morning of the 26th what did you do? A. I think Special Agent Hevrin came up and I had a short meeting with him and the other agents at the New York Hotel.

X. Was Sheriff Biggs present at that meeting? A. No, sir.

X. Was Roxie Campbell present? A. No, sir.

X. All right, go on. A. And I think at that time I detailed certain agents to interview the men that were in the custody of the sheriff at that time.

X. You detailed men to interview them? A. Yes, sir.

X. Did you interview anybody that day, the 26th? A. Yes, sir, I talked with Ed Simonds.

X. How long did you talk to him? A. I would say about forty-five minutes to an hour.

X. When was that? A. That was in the morning.

X. What time? A. Must have been about 10:00 to 11:00 or 10:00 to 11:15.

X. Where did you find him? A. He was at the YMCA.

X. How did he get over there? A. I don't know sir.

X. Where did you leave him? A. In the front room of the YMCA.

X. Who was present when you questioned him? A. I think Agents Mann and Roche and myself.

X. Where did Roche and Mann go after that, did they leave? A. They left with me, yes, sir.

X. Did you question anybody else that morning? A. Yes, sir, I interviewed Clyde Huffman—not Clyde, Clint.

X. Was he there in the YMCA? A. Yes; sir.

X. How long did you talk to him? A. About an hour and a half or two hours.

X. Who was present when you talked to him? A. Agent Roche.

X. All right, who else did you talk to that morning? A. That is all.

X. Who did you talk to in the afternoon? A. I think I was out of Copperhill all that afternoon.

X. You don't think you talked to anybody at all on the afternoon of the 26th? A. I don't think so, no, sir.

X. Who was with you? A. Agent Roche.

X. Did you talk to anybody the night of the 26th? A. No, sir. Any of the defendants?

X. Yes? A. No, sir.

X. All right, how about the 27th? A. I talked to Earl Hubbard a short time that morning.

X. What time in the morning? A. It was about, possibly 11:00 o'clock.

X. 11:00 in the morning. Where did you next question Earl Hubbard—that was Saturday was it not? A. Yes, sir, he was at the YMCA.

X. Whereabouts at the YMCA? A. In one of the rooms downstairs.

X. Now, let's get a time definite—what time did you say it was? A. I can say definitely.

X. Approximately? A. About 11:00.

X. How long did you talk to him? A. About thirty minutes.

X. And you left him? A. Yes, sir.

X. Who was with you when you talked to him? A. I think I was alone at that time.

X. You were alone at that particular time? A. Yes, sir.

X. Did Earl Hubbard claim to you then and tell you he was sick? A. No, sir.

X. You didn't know he was sick? A. No, sir, not then.

X. He didn't ask you for a doctor? A. No, sir, not at that time.

X. All right, you know how long he had been there at that time? A. No, sir, I do not.

X. Don't you know how he got there? A. No, sir.

X. You didn't send for him? A. No, sir.

X. You know whether any other agent sent for him? A. No, I don't know. They might have.

X. Where did you go when you left there? A. Went to Ducktown.

X. Who went with you to Ducktown? A. Agent Roche and we rode over with a deputy sheriff.

X. Who was the deputy sheriff? A. I can't think of his name, Clyde somebody.

X. All right, did you talk to any more of the defendants or Hubbard or any of the rest of them that afternoon after you got back, if you did come back? A. I talked to Marion Ellis for a short time.

X. Did you talk to Hubbard any more on Saturday? A. Yes, sir.

X. What time did you talk to him again? A. I think it was around 6:00 o'clock.

X. 6:00 at night? A. Yes, sir.

X. Where was he then? A. In the YMCA.

X. YMCA. How long did you talk to him then? A. About fifteen or twenty minutes.

X. Fifteen or twenty minutes. Did he ask you for a doctor then? A. No, sir, not at that time.

X. Well, do you know whether or not a doctor had already been to see him? A. At that time I don't think so.

X. You don't think he had? A. No, sir.

X. You know whether he had been out of the YMCA all day or not? A. No, sir, I do not.

X. And those were the only two times you saw Earl Hubbard all day on the 27th, which was Saturday? A. I think so, Mr. Baker.

X. You think those were the only times you talked to him? A. Yes, sir.

X. You don't know, Mr. Plaxico, whether the other agents had questioned him in relays all day or not, do you? A. No, sir, I do not.

X. You have no idea about that? A. Well, I know I had detailed certain men to interview these men.

X. Who did you detail to interview Earl Hubbard? A. I am not positive.

X. Did Earl tell you he was sick when you got back there at 6:00? A. He told me he had a headache.

X. All right, when did you talk to Ed Simonds again? You talked to him, I believe you said, twice before? A. Two or three times.

X. When was the first occasion you talked to Ed? A. I think it was on the 25th.

X. How long did you talk to him on the 25th? A. About an hour or little over.

X. Was that in the morning? A. Yes.

X. Something over an hour? A. Yes, sir.

X. When did you talk to him again? A. That is Ed Simonds?

X. Yes, sir? A. I talked to Ed Simonds again Saturday afternoon for a short time.

X. When did you see him again? A. On Sunday afternoon.

X. How long did you talk to him on Sunday afternoon. A. Altogether, taking the statement and everything, probably two hours.

X. How many times did you talk to Felton Woodward, how many times did you talk to him? A. I would say three times at the most.

X. When was the first time? A. I don't recall.

X. How long did you talk to him? A. A short time, I would say a short period of time.

X. The second time was about the same time as the first? A. Yes, sir.

X. Only talked to him a short time? A. Yes, sir.

X. The third time was the same way? A. That is the only time I actually talked to him, Sunday afternoon.

X. You were in charge of that investigation? A. Yes, sir.

X. Agent Mann would not have had authority to do anything without your approval? A. Oh, yes, sir.

X. Would he have the right to recommend bonds for some of the defendants be fixed more than others, without your approval? A. Not even with my approval.

X. That never did happen? A. No.

X. You know as a matter of fact he did recommend before the Commissioner when some of the men were committed at the jail; that some of the men be placed under $1,000? A. No, sir, I do not.

X. That didn't happen? A. If it did he was following the recommendation of the United States District Attorney, as to the amount of bond suggested.

X. You are certain of that? A. I mean if that is what happened.

X. Then the United States District Attorney is the one who asked that bond be fixed at a certain amount? A. That is a procedure.

X. Do you know whether or not—I will ask you how this memorandum got into the Commissioner's record, "May 3, 1940, at the request of Agent R. T. Mann, the bond of Felton Woodward was reduced from $3,000 to $1,000, and on this date the said Woodward executed bond of $1,000 for his appearance before me on May 6, 1940, the bond signed by Presswood, Ducktown, Tennessee, as surety"? A. I imagine the United States District Attorney recommended that, if it was done that way.

X. You don't know whether a recommendation was made to Commissioner Anderson when these men were put in the jail, that Woodward's and some of these other boys' bond be fixed at $1,000 and other defendants at $3,000? A. No, sir, I do not.

X. That didn't happen? A. I didn't say that, I said I didn't know.

X. You don't know? A. That is right.

X. At no time during all this investigation or at any time you were questioning these defendants, did you or any of the other agents ever promise them that they could get out on $1,000 bond? A. No.

X. You didn't make such a statement to anybody? A. No.

X. Was the word "probation" used, mentioned for the ones who would talk? A. No, sir.

X. You didn't tell anybody that? A. No, sir.

X. You didn't tell anybody if these men would come clean and tell the truth you would recommend a parole? A. No, sir.

X. At any time? A. No, sir, I want to explain the only statement about that, on the morning that the United States Marshal came over there, came to Copperhill to take these men into custody, Roxie Campbell came up to me and said he would regard it as a personal favor if Woodward, Earl Hubbard and Ed Simonds, if these men plead guilty, if we could do anything for them on account of their families, I told Roxie Campbell at that time it was my experience when a man did enter a plea of guilty, the only thing the investigating officials could do would be to tell the facts, and we are bound to apprize the Commissioner of the facts whether good or bad, I told him that was our duty, that is what we were supposed to do.

X. You did not authorize Roxie Campbell to go to Woodward and tell him if he would make a statement that you would recommend to the United States Attorney and to the Court that he be placed on parole? A. No, sir, I did not.

X. You didn't tell Campbell anything along that line? A. No, sir; except what I have just related.

X. Except what you have just stated? A. That is right.

Re-Direct Examination by Mr. Badgett.

RQ. Can you fix the time when these confessions were obtained, as to the time you talked to Mr. Campbell?

The Court: He said it was when they came down here.

Mr. Badgett: I wanted to get if it was before or after the confession was taken.

The Witness: Yes, it was.

The Court: The record shows they started down here after the confessions were made.

Re-Cross Examination by Mr. Baker.

RX. You say that Earl Hubbard had a chance to see his wife while he was in custody up there? A. I would not swear he saw her.

RX. He was sent to his home to see her? A. Yes, sir.

RX. That was on Tuesday morning before he came to Chattanooga? A. Yes, sir, I think that is right.

RX. His wife did not get to see him except in the presence of an agent or the sheriff forces between April 24th and the day he went to see his wife? A. I cannot say that.

RX. He did not get to see her while you had him? A. No.

RX. You wouldn't let anybody in to see him? A. I wouldn't say that. They were not in my custody.

RX. You had them there and examining them, would you have let anybody see him?

Mr. Badgett: What the witness would have done is wholly immaterial. What he did do can be asked.

The Witness: I don't mind answering it, if anyone had come to see him they could have seen as far as I was concerned.

Mr. Baker: As a matter of fact, no one did see him?

A. No one came to see him.

RX. No one came to see any of the defendants? A. As far as I know.

RX. If they had, they couldn't have gotten through the front door? A. Are you making a statement?

RX. I am asking you? A. I don't know.

RX. Do you know who that YMCA building belongs to? A. No, sir, I do not.

Re-Re-Direct Examination by Mr. Badgett.

RRQ. Did you have few or many meetings with the various agents? A. Many meetings.

RRQ. The first meeting was to get together with the agents who had come from various places? A. That is true.

RRQ. Is that what you mean by organization meetings? A. We don't call them that, the agents come in and we meet at a room and tell them what they are there for, the information we have had, and what their duties are to be, and any pertinent facts we have at that time.

RRQ. You were the agent in charge of the whole investigation? A. Yes, sir.

RRQ. As such agent, was it your duty to instruct the various agents in their different assignments? A. Yes, sir.

RRQ. Did you do that? A. Yes, sir.

RRQ. Did they do the assignments you instructed them? A. Yes, sir.

RRQ. How did you run down these various things these men would tell you? A. By investigation.

RRQ. How would you do it? A. Agents were detailed to do it.

RRQ. Were the agents busy in doing that? A. They led me to believe they were.

RRQ. You know they did go to various places in Polk County and in Georgia and all the way to the Dam? A. Yes, sir.

RRQ. And checked the information? A. Yes, sir; that the defendants had given up.

Re-Re-Cross Examination by Mr. Baker.

RRX. You say you never told these men they were lying, what language would you use when you would tell them you had found out they had not told the truth? A. I would tell him that.

RRX. Would tell, for instance, Ed Simonds, "I am very sorry, but I don't believe you have told me the truth"? A. No, sir.

RRX. How would you tell him that? A. I would say, "day before yesterday," for instance, "you told us you hadn't been into Georgia for the last six months, we now find that you were there and saw" so and so, "in Blue Ridge or McKaysville, Georgia," or somewhere else, and contacted so and so, then he would answer either yes or no, or that is not true, or something like that.

RRX. Suppose he said that is not true, what would you say then? A. I would say that we have developed information that indicates otherwise, something to that effect.

RRX. If he replied that your information was not correct, what would you say then? A. I would say, you must be incorrect, or something to that effect.

RRX. You questioned these men in that gentlemanly fashion all during the examination? A. I considered it as a gentlemanly fashion.

(This witness was then excused.)

The witness, R. T. MANN, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

Q. State your name, please? A. R. T. Mann.

Q. Are you an officer of any kind? A. Yes, sir; Special Agent Federal Bureau of Investigation.

Q. How long have you been such officer? A. Since August, 1934.

Q. Are you a graduate of the University of Tennessee? A. Yes, sir.

Q. The law school? A. Yes, sir.

Q. Did you participate in the investigation of the dynamiting of Tennesee Valley Authority power lines and poles in the Copper Basin? A. Yes, sir.

Q. When was that, when did you begin your investigation? A. On April 16, 1940.

Q. Did you question any of the defendants over there? A. I did.

Q. Which ones? A. Clyde Huffman, Felton Woodward, Earl Hubbard, Ed Simonds, Tate Green and L. T. Green, Clint Huffman and David Queen.

Q. You did question Ed Simonds, Felton Woodward and Earl Hubbard did you? A. Yes, sir.

Q. First, how long did you question Earl Hubbard the first time you saw him, and where did you first see

him? A. My first questioning was on Thursday the 25th of April, 1940.

Q. How long did you question him on that occasion? A. I imagine it was about two hours that afternoon.

Q. Did he give you any statement about the case then? A. No, sir, he did not.

Q. During the time you were questioning him, who else was present? A. Mr. Roche, Mr. Plaxico and Havron.

Q. When did you next question him? A. The next time I was present while he was being questioned was on Sunday night the 28th.

Q. Who was present then? A. Mr. Roche and Mr. Plaxico.

Q. Any of the defendants? A. Felton Woodward and Ed Simonds.

Q. Tell the Court about that occasion, what happened then? A. Mr. Roche and Mr. Plaxico had been questioning Simonds, with the other two men in there, just mentioned, I went into the room where they were questioning them, and Simonds had made a complete confession to Mr. Roche and Mr. Plaxico at that time.

Q. Did you do any questioning of them? A. I asked one or two questions is all.

Q. Was Felton Woodward saying anything? A. He said he was involved and wanted to make a clean confession of the whole thing.

Q. Did you call for him, or did somebody else? A. I don't recall about that.

Q. You were present? A. Yes, sir; he was there when I came in.

Q. Was Hubbard there talking with Woodward? A. They were all talking about the facts of the case at that time, the different parts they took, and wanted to make a clean statement of the whole thing.

Q. During the time you questioned Earl Hubbard, did you ever deprive him of his glasses? A. No, indeed

Q. Did you ever knock a cigarette out of his hand? A. Absolutely not.

Q. Did you ever deny him a cigarette when he wanted one? A. No, sir; I didn't.

Q. Did he smoke cigarettes there? A. He smoked quite a bit, yes sir; for a while he smoked one right after the other, the first day I talked to him. He made his own cigarettes.

Q. Did you ever knock one of those out of his hand, and throw your coat back and show your gun? A. No, sir.

Q. Did you have a gun on you? A. Not at the time I was questioning him, no. No, sir.

Q. Did you ever call Earl Hubbard a liar, or a damned liar? A. No, sir; I did not.

Q. Anything like that? A. I didn't call him a liar; I told him he was not telling the truth the first day I questioned him.

Q. Did you ever tell him he was a damned liar or a God damned liar? A. No.

Q. Did you ever call him a damned lying son-of-a-bitch? A. No indeed.

Q. Did you ever threaten him in any way, make any motions toward him? A. None whatever.

Q. Did you ever deny him water to drink when he asked for it, or something to eat? A. I don't remember his asking for anything like that.

Q. Do you remember anything that Earl Hubbard said about the manner in which he has been treated by the FBI agents? A. On Sunday night, yes, sir.

Q. What did he say? A. That he never received any better treatment from anyone in his life, that he had gotten good food and good treatment.

Q. Did he compare the food with what he had received before? A. Yes, sir; he said it was the best food he had had since the strike had been on, since July, 1939.

Q. Did any agent there, or anybody else, in your presence, when Hubbard was being questioned, call him such names as I mentioned? A. No indeed.

Q. Did anybody in your presence knock a cigarette out of his hand? A. No, sir.

Q. Did you ever shove him up in a chair and say "sit up straight"? A. I never put my hand on him, and I never saw anyone else do so, or make any gestures to that effect.

Q. Was Mr. Plaxico there present? A. Yes, sir.

Q. Did he ever deny him seeing a lawyer? A. I don't recall he ever asked for a lawyer.

Q. Did he ever tell him he couldn't smoke? A. No indeed.

Q. Did you ever deny his right to see his relatives? A. No, sir.

Q. Do you know whether he was allowed to see his relatives? A. No sir, I am not familiar with the fact that any of his relatives came there.

Q. Do you know whether he was taken to see his relatives? A. I don't know about that, no, sir.

Q. Did you mention to or question the defendant, Ed Simonds? A. Yes, sir.

Q. When? A. On Thursday, the 25th, Mr. Roche and I questioned him.

Q. Who else was there? A. When we first questioned him, just us three there.

Q. When did you question him again—how long did you question him that first time? A. I imagine maybe an hour, possibly a little longer.

Q. When was he questioned next? A. On Sunday night, the night I mentioned with respect to the other two.

Q. Did Ed Simonds make a verbal statement or confession then? A. He made that to Mr. Roche and Mr. Plaxico, when I came in.

Q. Was he making admissions when you came in? A. Yes, sir.

Q. How many of those three were making admissions, Woodward, Hubbard and Simonds? A. All of them, all trying to talk at once and tell what part they had taken in a particular transaction.

Q. Were they talking to each other about it? A. Yes, sir; they were trying to straighten out the details of the thing.

Q. Do you remember Earl Hubbard requesting to be placed in the city jail on Sunday night? A. I don't recall that. All I recall is that they agreed among themselves to stay together that night so they could get their story straight.

Q. They all wanted to stay together to get the details of their stories straight? A. That is right.

Q. Did you ever question any of these defendants at the hour of midnight? A. No, sir.

Q. Did you ever take them out of their bed when they were asleep to question them? A. No sir, not at all, not at any hour, I never took any of them out of bed that I know of.

Q. Did Ed Simonds ask you, or any other agent in your presence, for a lawyer? A. No, sir.

Q. Did you or any other FBI agents in your presence, when Ed Simonds was being questioned, state that it would be too bad for him if he didn't talk, and threaten to give him thirty-five years in the penitentiary if he didn't talk? A. No.

Q. Did you hear any agent, specifically Mr. Roche say to Ed Simonds, "You got awful damn smart since spending one night in jail"? A. No, sir.

Q. While you were present, did Mr. Plaxico tell Ed Simonds that he had influence with the District Court, and if he would make a statement, sign a confession, he would see that his sentence was cut, or did Mr. Plaxico offer anything in consideration of getting a statement? A. Absolutely none whatever, no.

Q. Did any of the other agents there? A. No.

Q. Did Mr. Plaxico ever tell him, if he would give a statement, make a confession, he would get his bond cut for him? A. No indeed.

Q. After you took the statements, did you check those statements, would you check what the man told you? A. In corroboration of the testimony?

Q. When you would question a man, before you got his statement, when he would tell you that he was at a certain place, would you check to see whether or not he was there? A. Yes, sir; we did supplemental investigations in every instance.

Q. What do you mean, do you mean you would send an agent out on the details to question various people about what the defendants had said? A. Yes, sir.

Q. And then confront the defendants with what those other people had said? A. That is right.

Q. How much time was consumed in that way? A. Well, I imagine a greater portion of the day in many of those instances was consumed by talking to members of the family, to find out.

Q. Did you ever go as far as Hiwassee Dam? A. Yes, sir; we went over there.

Q. Did you question Felton Woodward? A. Yes, sir.

Q. When? A. On Thursday the 25th, and also—

Q. How long did you question him on that day? A. Approximately an hour and a half, I expect.

Q. Then when did you question him again? A. On Sunday night, and on Monday the 29th.

Q. Sunday night was when he was present with these other men? A. Yes, sir.

Q. Did he make a verbal statement then? A. That is right.

Q. Have you read his written confession? A. I have, I took it.

Q. State whether or not his written confession varies in any material matter from the oral statement he

gave on Sunday night? A. The only difference, on Sunday night he did not go into details so much.

Q. There is no material difference? A. No, none whatever, so far as the whole thing is concerned.

Q. When was the written statement taken? A. On Monday morning and Monday afternoon.

Q. Just describe to the Court the manner, or demeanor of Felton Woodward when giving his statement, how did he give it, his demeanor there? A. He had considerable difficulty in recalling the details, he said his mind was not exactly clear on all of it, it took a good while in order to get the details of it, of how it happened, everything in the chronological order of events, and he also complained on occasions that his mind was befuddled in making the statement, upon relating about what he had done, and that is the reason it took so long to do it. It took the morning and the greater part of the afternoon.

Q. He wanted to tell it in his own way? A. Exactly what had happened, as to the way it happened, he wanted to revise his statements and tell exactly how it took place.

Q. How long a statement did he make? A. He gave me five pages, single space typewritten statement.

Q. Of his implication in it, and others? A. Yes, sir.

Q. At the time you took Felton Woodward's statement and at the time Ed Simonds gave his statement, or at the time Earl Hubbard gave his statement, did you or any other agent offer them anything in consideration of their statement? A. No, sir.

Q. State whether or not they were told before they made statements that they did not have to make a statement? A. That is right.

Q. What else were they told? A. They were told they did not have to make a statement, or tell us anything, or any kind of statement.

Q. What did they say? A. They said they wanted to get it out of their system, wanted to make a clean breast of it, on that Sunday night.

Q. State whether or not they were told if they did make a statement it could be used against them? A. Yes, sir.

Q. Did you or any other FBI agent tell Felton Woodward that you come down there to break the strike, that strikes lead to killings, and the man you were after primarily was M. C. Anderson? A. No.

Q. Do you know whether or not Agent Morgan ever questioned Felton Woodward? A. Not to my knowledge. I was not present at any time he questioned him.

Q. While you were present, was Mr. Plaxico there? A. Yes, sir.

Q. Did Mr. Plaxico ever state to Felton Woodward that he knew the District Judge, and had great influence with the District Judge, and if he would give a written confession or statement that he, Plaxico, would come down and recommend to the Court that he be paroled? A. Absolutely no.

Q. Did Mr. Plaxico, or any other agent, offer anything in consideration for a statement? A. No remarks like that were made by anyone.

Q. Did you make any other investigation about dynamiting, except as to the power lines? A. Yes, sir; a car was blown up out on the road toward Farmer, about eight miles from Copperhill.

Q. Did you investigate that case as to get leads on this case? A. No, sir.

Cross Examination by Mr. Baker.

X. Mr. Mann, where did you go to school? A. University of Tennessee.

X. Are you a member of the Bar? A. Yes, sir.

X. Did you ever practice law? A. No, sir.

X. You were sent out under the rule, were you not, when this case was started? A. That is right.

X. State if all during the recess you have been talking to Mr. Roche here in the court room? A. Yes, sir, but not talking about this case.

X. You did talk to him continuously during the recess? A. That is right.

X. You went in to the Copper Basin on April 16th—

Mr. Frazier: Is it not a fact I told you that you could leave the witness stand?

The Witness: Yes, sir.

Mr. Frazier: I told you to come down from the witness stand?

The Witness: Yes, sir.

The Court: I did not expect him to sit there all the time.

Mr. Baker: He didn't tell you to go and talk to Mr. Roche?

A. I remained on the witness stand until he told me to come down, and he said not to discuss the facts of the case, and I did not.

X. You did not discuss any of the facts at all? A. No, sir.

X. You went into the copper basin on April 16th? A. Yes, sir, on Tuesday.

X. With Mr. Roche? A. That is right.

X. Who did you first contact when you got into the Copper Basin? A. Sheriff Biggs.

X. And Roxie Campbell? A. He was there later on.

X. You investigated this case for several days there? A. That is right.

X. Constantly associated with the Sheriff? A. Absolutely.

X. He went with you on most of your investigations? A. Yes, sir.

X. The Sheriff told you and Mr. Roche that he suspected certain people of being guilty? A. Well, he suspected quite a few people, of course.

X. You discussed with the sheriff whether or not those people should be arrested? A. No, sir, I did not discuss that with him.

X. You discussed with him how you would talk to them? A. How we would talk to them?

X. Yes, sir? A. Just what do you mean by that question?

X. About some arrangement being made for you and Mr. Roche to talk to these suspects? A. Yes, we had to have some place to talk to them, naturally we would have

to have an appropriate place, we couldn't talk to them on the corner.

X. You told the sheriff to furnish you an appropriate place to question them? A. He said he had an appropriate place, yes, sir.

X. After you had continued your investigation for a while, you knew pretty well who you wanted to talk to did you not? A. That is right.

X. Then you called on the sheriff to take those people into custody and make them available? A. I didn't call on him to make anyone available.

X. You told him you wanted to talk to suspects? A. That is right.

X. You told him to get them for you? A. I didn't tell him to get anyone.

X. You told him you wanted to talk to these various men that he suspected, or that you suspected? A. I told him we were interested in talking to anyone that might be suspected. I did not give him any direction to arrest anyone at all.

X. You did tell him you wanted to talk to them, and you couldn't talk to them unless they were in custody? A. That is true, yes, sir.

X. Then the sheriff took them into custody so you could talk to them? A. That is right.

X. So, as a matter of fact, all these defendants were arrested, picked up and put in jail so you and Mr. Roche and these other agents could talk to them? A. The sheriff picked them up on his own accord; I did not direct the sheriff to pick up any individual.

X. The sheriff picked them up so you and these other agents could talk to them? A. Of course, that was the purpose, we wanted to talk to anybody he picked up.

X. As a matter of fact, they were your prisoners all the time and not the sheriff's prisoners? A. I don't agree with you on that.

X. They were not your prisoners, you had no control over them, they were not in your custody? A. No, sir.

X. Was the sheriff always present when you questioned them? A. We questioned so many, I couldn't tell you any particular instance. On most occasions, as I recall, he was present.

X. Was he present on many occasions? A. He was present in the building of the YMCA headquarters.

X. Now, when did Mr. Plaxico come in? A. He came in on Sunday night, the 24th.

X. You and Mr. Plaxico and Mr. Roche had a meeting the next day did you not? A. We had a number of meetings.

X. You had an organization meeting the next morning? A. I presume so.

X. You and Mr. Roche discussed the case with Mr. Plaxico? A. That is right.

X. Sheriff Biggs was present at that meeting? A. Yes, sir.

X. Roxie Campbell was present, was he not? A. I don't recall.

X. Sheriff Biggs discussed the case with you and Plaxico? A. Yes, sir.

X. They all knew about it? A. That is correct.

X. At all your various meetings you had at the New York Hotel, I will ask you if Mr. Biggs, the Sheriff, was present at nearly all of them? A. I think that he was.

X. He entered into the discussion with Mr. Plaxico all along the line? A. That is right; he entered into discussion with all of us.

X. There at the New York Hotel, at your meetings? A. Yes, sir.

X. Roxie Campbell was there most of the time? A. I don't recall about that.

X. You are positive that Sheriff Biggs was there? A. Yes, sir.

X. When was it you first questioned Earl Hubbard? A. On the afternoon of Thursday, the 25th.

X. Where was he? A. In the YMCA building.

X. How did he get there? A. I don't know.

X. Did you send for him? A. No, sir, I did not.

X. You didn't tell the sheriff to bring him there? A. No, sir, I issued no instructions whatever to the sheriff.

X. You talked to him two hours or more, did you not? A. Approximately two hours, I would say.

X. Where did he go when you got through talking to him? A. I don't recall.

Q. You just left him there; the next time you talked to him was when? A. It was in the same building.

X. When was that? A. That was on Sunday night.

X. You saw him in the YMCA building at any time, did you or not, on Saturday? A. Yes, sir, I saw him there.

X. What time of the day did you see him there? A. Saturday afternoon.

X. What time of the day, later in the afternoon? A. Rather late, as I recall. I was talking to Marion Ellis that afternoon.

X. Who was talking to him when you saw him? A. I don't recall, one or two agents.

X. Do you recall whether he had his glasses on when you saw him? A. I couldn't tell you about that at any time.

X. When did you talk to Ed Simonds? A. Thursday afternoon.

X. How long did you talk to him? A. Probably an hour or an hour and a half.

X. When did you talk to him again? A. On that Sunday night.

X. You only talked to Ed Simonds on two occasions? A. That is to question him. I probably asked him how he was, or if he wanted anything when I would see him, but I didn't question him except on those occasions.

X. How many times did you talk to Felton Woodward? A. I talked to him on the 25th.

X. How long a time? A. I judge an hour or an hour and a half, maybe two hours.

X. When did you talk to him again? A. On Sunday evening.

X. Did you ever talk to Roxie Campbell about any of these boys? A. I talked to Roxie Campbell about all of them I presume, I asked about their reputation, what their background was, and how long he had known them.

X. Did you ever tell Roxie Campbell to tell any of these men if they would come on and make a statement that they would get out light? A. Did I do what?

X. If they would make a statement they would get out light? A. No, sir, I did not.

X. Did you ever hear Mr. Plaxico tell him that? A. Absolutely not.

X. As a matter of fact, you had agreed, you and Mr. Plaxico, if they would make statements you would try to help them out? A. That is rather preposterous, we don't have authority to do anything like that, that is not in our jurisdiction.

X. You had discussed at these various organization meetings what you would do with the men, or what you would recommend about bond or parole, if they would make a statement? A. I never made such a statement to any of them, any statement to that effect.

X. You didn't make a statement to that effect, at all? A. No, sir, I did not.

X. When these men were brought to the Hamilton County jail, on the 30th of April, 1940, you did, as a matter of fact, recommend to Commissioner Anderson to place these three particular men under $1,000 bond? A. I asked the Commissioner at that time, you have reference to when the prisoners were brought in, I was up there and I asked Mr. Anderson what the bond would be, so I could make a record of it. I don't have any recollection of telling him to make any particular bond. I have nothing to do with that.

X. Didn't you recommend that Commissioner Anderson place Simonds, Hubbard and two other of the de-

fendants under $1,000 bond, and the other defendants under $3,000 bonds? A. I have no recollection of it.

X. You didn't do that? A. We were up there at that time, but we had no conversation along that line.

X. On May 3rd, didn't you go before Commissioner Anderson and ask him to reduce Felton Woodward's bond from $3,000 to $1,000? A. No, sir, I have no recollection about that.

X. You didn't do that? A. No, sir.

X. Do you know how this notation got into Commissioner Anderson's books over there, or his records, and in the file of this court, "May 3, 1940. At the request of R. T. Mann, Agent, FBI, the bond of Felton Woodward was reduced from $3,000 to $1,000 on this date, and said Woodward executed bond for the sum of $1,000 for his appearance before me on May 6, 1940. Presswood, Ducktown, Tennessee, as surety," do you know how that notation got into the records of this Court? A. No, sir.

X. You are positive you didn't make it? A. No, sir, there has been some misrepresentation of the facts.

X. You never discussed the reduction of Felton Woodward's bond with Commissioner Anderson? A. I discussed all the bonds the first day I was up there on the 30th. As I recall it you were present at the time.

X. You recommended at that time, at the time these five were placed under $5,000 bonds that the Commissioner reduce them, that was your recommendation? A. I never recommended that they make any bond.

X. You never made such a recommendation as that to the Commissioner at any time? A. No.

X. Do you know whether these men in the city jail got anything to eat or not? A. I assume they did from the remarks made. I never saw them actually engaged in eating.

X. You never saw any one of the defendants get anything to eat did you? A. No, sir.

X. You never saw that? A. No, sir.

X. When you would question these various defendants, Hubbard and Woodward and Simonds, I will ask you gentlemen if you would tell them at various times that they were not telling the truth about it? A. At first, yes, sir. I asked them why they made contradictory statements.

X. They told you repeatedly over a four day period, all the time that they were not guilty and knew nothing about these transactions? A. They made contradictory statements.

X. Every time one would make a statement you would tell him that was not true, and you didn't want that kind of proof? A. That is right.

X. And that you knew what the truth was? A. That is true.

X. And when he would make another statement you would tell that was not true and that you knew what the truth was? A. We questioned their families too.

X. You told them every time that you knew what the truth was? A. I don't recall stating that. We asked them to tell the truth on a number of occasions.

X. How did you know whether they were telling the truth or not? A. As to their involvement?

X. Yes? A. We received confidential information about their involvement.

X. And you knew that information was true? A. Not absolutely, we felt confident it was.

X. You had already passed judgment on the information and felt your information was the truth? A. In the light of the information we received from confidential sources.

X. And finally when the three defendants made a statement which conformed to the information you had and which you knew was the truth beforehand, you were satisfied? A. When they told statements that dovetailed and correlated their activities I felt confident they were telling the truth.

X. The final statement that you got in writing and conformed to what you told them you knew was the truth, you knew that was true? A. Generally speaking.

X. When they got to the point that they agreed with you on what you knew the truth to be, then you had them make a statement? A. I don't say that is true. When they finally made a statement the statement was more or less spontaneous on their parts. We waited until they told us the truth.

X. You say when you was ready to take Felton Woodward's statement he had difficulty recalling details? A. He did.

X. Had a great deal of difficulty? A. Yes.

X. I will ask you if you didn't help him with what those details were? A. Couldn't have, I didn't know what the details were, how could I prompt him to say

his name was John M. Cash when he went to Bessemer, Alabama, to get some fuse. I didn't know he went under that name.

X. I will ask you if you didn't tell him all along through the times he was making that statement, about the information you had and supply him for that in his statement? A. Absolutely no.

X. Did he write that statement himself? A. I wrote it on the typewriter.

X. Is it in his language? A. Generally conforms to the way I understood his statements on the matter.

X. How many hours did it take to write that statement? A. Write or take it?

X. To take it? A. Approximately 11:00 that morning until around 2:00 and recessed for lunch and came back at approximately 3:50.

X. How long after that? A. Until around 7:00 or possibly 7:30 that night.

X. Did you take Felton to lunch with you? A. No, sir.

X. Do you know where he went to lunch? A. There in the building I presume.

X. From 11:00 o'clock until 2:00 or 2:30 you say? A. About 2:30.

X. Three and a half hours? A. Yes, sir.

X. And then from 3:30 to 7:30? A. Yes, sir.

X. Four hours, making a total of seven hours it took you to write out the statement when the man wanted to make a statement to you?

Mr. Badgett: I object to that. He can ask about this one particular man and has not specified as to one partic-

ular man. He asked if it took seven hours to take a statement from these men.

Mr. Baker: I mean Felton Woodward, it took you seven hours to take this statement from Felton Woodward?

A. That is correct.

X. And it took him that long to recall all the details? A. That is correct.

X. Did you prompt him along anytime on this confidential information that you had? A. Did I do what?

X. Prompt him? A. What do you mean, "prompt"?

X. Did you tell him when he couldn't recollect something and you had confidential information on it, the truth was so and so, that that was what it was? A. The only thing I knew about was the actual dynamiting, the exact times, when they took place and he had a hard time recalling the times and would get those mixed up. He couldn't recall in chronological order the events as they took place. I had that of record.

X. You did prompt him on that? A. Certainly did.

X. And on the other details about the various places he went? A. I didn't know where he had gone.

X. Did you suggest to him any date that he went to a certain place? A. Yes, sir, as to the meetings he had gone to.

X. You suggested the date to him? A. If he had been to meetings on occasions and asked when it was and he volunteered the information.

X. You then referred to the confidential information as to what dates these meetings took place? A. That is true.

X. And you told him that was when it happened and made that a part of his statement? A. I asked him if that was when it happened.

Re-Direct Examination by Mr. Badgett.

RQ. Mr. Mann, how many times did you talk to Felton? A. On Thursday afternoon and Sunday evening.

RQ. Had you talked to people who gave you the information you had and then check on that? A. Some agents contacted members of the family to find out where they were.

RQ. And if he told you something different you would tell Felton what they said? A. Yes, sir, as being contradictory to what he told us.

RQ. I wish you would tell the Court why you took seven hours taking Felton's statement? A. It was unusually long. In the first place I use the typewriter some but can't type as fast as a person who uses shorthand and can take it down and consequently a great portion of the time was spent typing up the statement and the remainder of the time was spent by Woodward in order to get the facts straight.

RQ. Did you give him plenty of time? A. Yes, sir, he would state facts and then want to change them and rather than change it or erase it I indulged him a long period of time and waited. Sometimes he would sit five minutes meditating over what we asked him.

RQ. And he wanted to have it right? A. That is right.

(This witness was then excused.)

The witness, E. M. HEVRON, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

Q. State your full name? A. Earl Maxwell Hevron.

Q. What is your profession? A. I am an attorney.

Q. Where are you practicing now? A. Crowe County, Kentucky.

Q. Is that in Hartford, Kentucky? A. Yes, sir.

Q. How long have you been in private practice? A. The last time since the first of June.

Q. Prior to that what was your profession. A. Special Agent, Federal Bureau of Investigation.

Q. Located where? A. Chattanooga.

Q. How long were you located here in Chattanooga? A. About 18 months.

Q. When did you resign? A. About the 25th of May I expect.

Q. You were here 18 months prior to that? A. Yes, sir.

Q. How long had you been with the Federal Bureau of Investigation? A. Nearly six years.

Q. Of what law school are you a graduate? A. University of Kentucky.

Q. Member of the Kentucky Bar? A. Yes, sir.

Q. Are you a member of the Tennessee Bar? A. No, sir.

Q. Back in March and April, 1940, were you concerned with the investigating of dynamitings of the Tennessee Valley power lines in the Copperhill basin around Polk County, Tennessee, and Fannin County, Georgia?

A. I participated in that investigation beginning the latter part of April.

Q. Which of these defendants, if any, did you question about that dynamiting? A. I participated in the questioning of the Green Brothers.

Q. Mutt and Tate? A. Yes, and Earl Hubbard, Martin Simonds, Felton Woodward, Sweat Woodward and also probably two or three of the others.

Q. Did you participate in the questioning of Ed Simonds? A. No, sir.

Q. But you did in the questioning of Earl Hubbard? A. Yes, sir, the first time he was interviewed only.

Q. When was that? A. My first day in Copperhill, sir.

Q. Do you know the date of it? A. About April 25th.

Q. On that occasion did Mr. Hubbard give a confession, either verbal or written? A. No, sir.

Q. Is that the only time you talked to him? A. Yes, sir.

Q. On that occasion I will ask you if you knocked a cigarette out of his hand that he was rolling? A. No, sir.

Q. Did you tell him he couldn't smoke a cigarette? A. No, sir, on the contrary, he smoked continuously.

Q. What kind was he smoking? A. He rolled his own.

Q. Do you know whether any other agent gave him cigarettes that were already rolled? A. I don't recall it.

Q. He did roll his own and smoke continuously? A. Yes, sir.

Q. I will ask you to state whether or not you or any other agent in your presence, while questioning Earl Hubbard, ever shoved him back against the chair he was in and told him to sit up straight? A. No, sir, we were not close to him.

Q. How close were you to him? A. I suppose close to approximately here to the end of this table (8').

Q. Did you ever see any agent get up, specifically Agent Mann, and make a threatening motion toward the defendant? A. No, sir.

Q. Did you see him throw his coat back and show his side arms? A. No, sir, I don't recall that.

Q. Did you ever or any other agent in your presence abuse this defendant in any way, by cursing him or in any manner? A. No, sir.

Q. I will ask you to state whether or not you or any other FBI agent ever refused this defendant permission to have his glasses? A. His what?

Q. Right to wear his spectacles? A. No, I think he was wearing his glasses. I am positive about that, I don't recall having seen that man without glasses. I may be wrong, but I don't recall that at all.

Q. Do you recall whether or not you or any other FBI agent ever refused him an attorney when he asked for one? A. The only mention ever made of an attorney

by these defendants was Earl Hubbard did on one occasion, that first time?

Q. What did he say? A. Wanted to see an attorney and immediately said he didn't need an attorney, because he had committed no wrong.

Q. Is that the only time it was mentioned? A. Yes, sir.

Q. Did anybody say then you can't have one? A. No, sir.

Q. You or anybody else? A. No, sir.

Q. His statement was I don't need one because I have done no wrong? A. That is right.

Q. In your presence did you or Mr. Plaxico or Roche or any other agent ever promise Earl Hubbard anything in consideration of his making a written or oral statement of his implication in this crime? A. No, sir.

Q. Specifically, did you ever hear agent Plaxico or agent Roche or any other agent, or did you yourself make such a statement, promise this defendant Earl Hubbard consideration, that is, that you would recommend to the Court that a light sentence be imposed or that a parole be imposed for him to make a written confession or statement? A. No, sir.

Q. Or any statement? A. No, sir, no promises were made at all.

Q. Do you know what was told these men with respect to their rights before they made the statements, as to whether or not they had to make them? A. They were definitely told they did not have to make statements.

Q. What else was told them? A. Did not have to make statements and anything they said could be used against them in court.

Q. I believe you say you didn't question Ed Simonds? A. I don't recall questioning Ed Simonds at all.

Q. And were not present when he was questioned? A. I don't recall that at all sir. There were quite a number of them there, quite a bunch all milling around but I don't recall that at all.

Q. You did question Felton Woodward? A. Yes, sir.

Q. When was he questioned first by you? A. Agent Mann and I questioned him later on that same day Hubbard was questioned.

Q. On the 25th? A. Questioned him for approximately an hour and a half but no statement was taken and no admissions were made by him in reference to the case and then later on, several days later I took a written statement from him.

Q. That was on Monday was it not? A. I believe it was on the day the complaints were filed in Chattanooga. It was after he had verbally confessed to others at Copperhill.

Q. The next day? A. Yes, sir.

Q. You are not positive about that? A. No, sir.

Q. I will ask you if during the time you questioned Felton Woodward who was present? A. On the first occasion Agent Mann and I.

Q. On that occasion—when was the second occasion? A. When we took the statement and Agent Mann and Agent McCabe and I were there.

Q. On those two occasions did you at any time hear Bud Mann call Felton Woodward a God damn liar or anything similar to that? A. No, sir.

Q. Did anybody else call him that, you or anybody else? A. None of these defendants were ever cursed to my knowledge.

Q. Did any of them ever use the words I just said with "S. B." on the end of it? A. No, sir.

Q. Did you or any other agent in your presence when questioning Felton Woodward ever make this statement that you came down here to break this strike and stop maybe some killing, and you were going to break the strike and primarily you were after M. C. Anderson? A. No, sir, it was quite the contrary. In almost every one of the interviews these men were told that we had no connection or concern with the strike whatsoever and were only interested in the destruction of Government property.

Q. Was Mr. Morgan ever present when you questioned Felton Woodward? A. No, sir.

Cross Examination by Mr. Baker.

X. Mr. Hevron, you got here about the 25th of April, is that right, in the Copper Basin? A. Yes, sir.

X. Where did you go when you first arrived? A. To the New York or New Yorker Hotel.

X. In Copperhill? A. Yes, sir.

X. Quite a number of special agents were there when you got to the Hotel? A. At that time there were three or four others.

X. Did you meet every morning or meet there on the morning—or I mean did you arrive there on the morning of

April 25th or the night of the 24th? A. I arrived there early in the morning of the 25th. I drove direct to Copperhill and it was up in the morning sometime.

X. Did you special agents have a meeting the next morning, the 25th, before you started to work, to outline what work you were going to do that day? A. I don't know that you could call it outline the work. I received my instructions from the agent in charge.

X. That was Plaxico? A. Yes, sir.

X. Who was present when that meeting was held and instructions given? A. Mr. Plaxico was there and Mr. Mann, and I was there, because I was assigned to go talk to a person who was in jail at McKaysville, Georgia, and Agent Roche I believe was the only agent in town. I don't know whether he was there or not.

X. Was Sheriff Broughton Biggs there? A. I don't recall him being there.

X. Was Roxie Campbell there? A. No, sir.

X. You know both of those men don't you? A. I met them later, yes.

X. Every day and when you started to work in the morning you have some sort of a meeting and the agent in charge Plaxico would direct each one what to do. A. Not necessarily a meeting; just so we had instructions.

X. You all got together most of the time when you got those instructions didn't you? A. No, sir, not necessarily.

X. Did you ever attend a meeting there when all the special agents were there when Broughton Biggs, Sheriff of Polk County, was present? A. I don't know that I did.

X. You don't think you did? A. We were with Sheriff Biggs and he was frequently at the New York Hotel and he was around the YMCA frequently. I don't know that we attended any conference with him, because I had no instructions to receive from him.

X. Will you say one way or the other, if you can remember, whether or not at the instruction meetings Sheriff Biggs was present? A. Naturally I suppose he was but I don't recall.

X. You don't recall whether he was or wasn't? A. No, sir.

X. You talked to Earl Hubbard on April 25th, of that morning or afternoon? A. Afternoon.

X. What time in the afternoon? A. Around lunch.

X. Sometime after lunch? A. Yes.

X. How long did you talk to him? A. Approximately two hours.

X. I believe you said Agent Mann was with you at that time? A. Agent Mann and Agent Roche and Agent in Charge Plaxico.

X. Where did you talk with Earl? A. In one of the rooms at the YMCA.

X. Was he there when you got there? A. Yes, sir.

X. Do you know how he happened to be there? A. I can only give you my understanding.

Mr. Badgett: I object to that.

The Court: Well, let him tell us.

The Witness: My understanding was he had been picked up by the Sheriff's force.

Mr. Baker: Did he stay at the YMCA, was he kept in custody there?

A. So far as I know he was.

X. The only time you saw him he was in custody at the YMCA? A. That is right.

X. As a prisoner? A. Yes.

X. During this conference you had with him on April 25th, he told you he wanted a lawyer? A. He made that statement one time.

X. What did you say he said immediately after that? A. He said he didn't need a lawyer as he had committed no crime, no wrong.

X. To refresh your recollection, Mr. Hevron, didn't Mr. Plaxico make that statement, that he did not need a lawyer, because he wasn't charged with anything? A. No, sir.

X. You are positive of that? A. Yes, sir.

X. You are positive Hubbard made the statement, and not Plaxico? A. Yes, sir.

X. Did he make that statement all in one sentence or wait around a little? A. Not anything passed between the two statements, not enough time for anyone else to say anything.

X. To start out he said he wanted a lawyer and then said no I don't need a lawyer, I have done no wrong? A. Very close together.

X. Did you ever talk to Hubbard again? A. No, sir, I never did.

X. Were you in the YMCA on April 27th? A. I think so.

X. Did you see Hubbard there? A. I don't recall it.

X. I will ask you if he asked someone, or if there wasn't someone when you got to the YMCA being questioned by other agents? A. I don't recall that.

X. But the first time you talked to him he told you that he was not guilty? A. That is right.

X. You dismissed him, discussed with him about two hours and then went and left him? A. That is right.

X. Don't you know whether other agents talked to him at other times or not? A. I can only give you my understanding.

X. You also questioned on April 25th Felton Woodward? A. Yes, sir.

X. Who was present when you questioned him? A. Agent Mann.

X. Where did you question him? A. At the YMCA.

X. Was Sheriff Biggs present? A. No, sir.

X. What time of day did you talk to him? A. I think that was just before our supper hour, approximately along the last part of the afternoon.

X. You had already talked to Hubbard? A. Yes, sir.

X. And you talked to him after you talked to Hubbard? A. Yes, sir.

X. For how long a period of time? A. About an hour and a half.

X. And it could have been as long as two or three hours? A. I hardly think so.

X. And then you left and didn't see Felton Woodward from the 25th until the following Monday? A. Until the day we took the statement from him.

X. Then you and Agents Mann and McCabe took a statement from him? A. That is right.

X. That was taken in the YMCA building there? A. Yes, sir.

X. Who wrote that statement? A. Mr. Mann.

X. What time did he start taking it? A. About eleven in the morning.

X. How long did it take you to get that statement? A. We worked with him from eleven until about two and stopped to get our lunch and went back in about an hour and a half and worked until about seven o'clock.

X. It took six or seven hours to get that statement? A. Approximately.

X. Did you question him along as you took that statement? A. Yes, sir.

X. Did you suggest details to him? A. Of necessity, yes.

X. You and Agent Mann and McCabe knew what the truth was did you not and you had confidential information as to what the truth was about this situation? A. We thought we did.

X. And you refreshed Felton Woodward's recollection all along from that confidential information did you not during that six or seven hours? A. It is possible we did.

X. Felton had a great deal of difficulty in remembering what you wanted him to remember didn't he? A. I wouldn't say that.

X. He did have difficulty remembering? A. It was rather tedious and laborious operation getting the

statement straight, he seemed to have trouble with it but he gave every evidence of trying to tell the truth.

X. He appeared to be groggy didn't he? A. No, sir.

X. His mind appeared to be perfectly clear? A. Yes, sir.

X. He had no difficulty in remembering details? A. I wouldn't say that.

X. He did have some difficulty in remembering details. A. He was very hesitant.

X. And when he hesitated you and Agent Mann would refresh his recollection with the confidential information you had? A. That is possible.

X. And when the statement was finally made up there was about as much of your confidential information in it as he had told you? A. No, sir, he agreed that everything in that statement was true.

X. You had advised him it was true, because you had confidential information of that? A. We didn't convince him of anything; that is his statement.

X. Do you know whether these men got anything to eat or not? A. My understanding was they ate regularly.

X. Did you ever see one of them eat anything? A. No, sir, they didn't feed them in the lobby of the YMCA.

X. Do you know whether Felton Woodward got any thing to eat that day you took his statement? A. I don't know, sir.

X. Now, while you were questioning this man in the room for seven hours and taking his statement, whose custody was he in? A. He was a state prisoner was my understanding under Sheriff Broughton Biggs.

X. Was any State officer there with him while you questioned him? A. Not except several in the building, but none in the room.

X. What would you have done if he started to walk off; he wasn't your prisoner?

Mr. Badgett: We object to that, it isn't competent.

Mr. Baker: He wasn't your prisoner you say—

The Court: I don't know whether he knows what he would have done or not.

A. I don't know. I suppose we would have tried to prevent him from leaving.

Mr. Badgett: I ask that that be stricken from the record.

The Court: It is not competent, I don't think. Let it go into the record.

Mr. Baker: Did you ever tell any of these defendants they weren't telling the truth?

A. I suppose we did.

X. What did you tell Earl Hubbard when he told you something you knew was not the truth? A. I can't recall the exact words.

X. Give it as near as you can? A. Probably interrogated them in the same manner you are interrogating me. Are you right sure about that, can't you be mistaken and so on.

X. Did you tell him this, I have got confidential information about this and know the truth and know you are not telling the truth? A. No, sir.

X. You never told him you knew what the truth was? A. No, sir, we didn't reveal any confidential information.

X. Did you tell this man Earl Hubbard particularly that you knew what the truth was? A. I suspect we did.

X. And when he told you anything that didn't correspond with what you knew the truth to be you told him that wasn't the truth and you knew it wasn't? A. Yes, sir, I suppose I did.

X. And did that repeatedly? A. He wasn't cursed or abused verbally or called liars or such language as that, it wasn't necessary.

X. Did you special agents have some discussions among yourselves what you would do in reference to recommending anything for these defendants if they would make a statement, in reference to probation or bonds, anything like that? A. No, sir, that would have been silly.

X. It wasn't discussed at all? A. No, sir.

X. It wasn't mentioned? A. No, sir.

X. Were you present at the Hamilton County jail when these men were put in jail? A. No, sir.

Re-Direct Examination by Mr. Badgett.

RQ. After this statement was ready what was done with it; was Felton Woodward given an opportunity to look at it after it was typewritten? A. Agent Mann was sitting beside him on a cot they were sitting on and read it over word for word and Felton followed him as he read it over slowly and signed each page of it and said it was the truth.

(This witness was then excused.)

The witness, JOHN E. LUNSFORD, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

Q. State your name, please? A. John Lunsford.

Q. Where are you now stationed? A. Detroit, Michigan.

Q. What is your position? A. Special Agent, Federal Bureau of Investigation.

Q. How long have you been such agent? A. Six and a half years.

Q. Are you a graduate of any colleges? A. University of Tennessee Law College.

Q. When did you graduate? A. 1934.

Q. Back in March, the latter part of March and April, 1940, where were you stationed? A. Atlanta, Georgia.

Q. I will ask you to state whether or not you were called in to Polk County, Tennessee and Fannin County, Georgia for an investigation? A. Yes, sir.

Q. What was the nature of that investigation? A. Investigation concerning the destruction of some Government property owned by the TVA.

Q. Mr. Lunsford, in the course of that investigation did you talk to either of the defendants Ed Simonds, Felton Woodward or Earl Hubbard? A. Yes, sir.

Q. Which ones did you talk to Earl Hubbard? A. Yes, sir.

Q. On what occasion? A. I talked with him on two occasions.

Q. When was the first one? A. I believe the first time was on the evening of April 26th.

Q. Who else was present? A. Special Agent C. A. Whitten.

Q. Is that all? A. Yes, sir.

Q. When was the second occasion? A. The second occasion was several days later, I believe April 30th, 1940, in the morning.

Q. Mr. Lunsford, at any time you were present questioning the defendant Earl Hubbard did you or any other agent of the Federal Bureau of Investigation in your presence or to your knowledge, make any threats to Earl Hubbard? A. No, sir.

Q. Were any promises ever made to him? A. No, sir.

Q. Specifically did any agent ever tell him that he would be made light on or the FBI would recommend to the Judge that parole be given if he gave a signed written confession? A. No, sir.

Q. While you were present did he ask anyone for a lawyer and was refused by the FBI? A. No, sir.

Q. You know Earl Hubbard don't you? A. Yes, sir.

Q. Were his glasses ever taken off of by you or any member of the FBI? A. No, sir.

Q. Do you know whether he had his glasses on or not? A. I am pretty sure he had them on.

Q. Did you or anybody else ever tell him that he couldn't have his glasses? A. No, sir.

Q. Did you or anybody else ever knock a cigarette out of his hand he was attempting to roll? A. No, sir.

Q. Do you know whether he did smoke or not? A. Yes, sir, he smoked quite a bit.

Q. What was he smoking there, do you know whether they were ready made cigarettes or not? A. He rolled quite a few I know.

Q. Do you know whether he had any other cigarettes or not, whether any of the agents gave him cigarettes or not? A. I think several of them probably gave him some, or some of the deputies around there.

Q. You did see him smoke some? A. I did.

Q. Mr. Lunsford did you ever deprive this man of water? A. No, sir.

Q. Shove him back in the chair and tell him to sit up straight? A. No, sir.

Q. Did Mr. Mann in your presence ever make a threatening motion toward him and pull back his coat to show his sidearms? A. No, sir.

Q. Did you, Mr. Lunsford, or any other agent while questioning Earl Hubbard, use any profanity at all toward him? A. No, sir.

Q. Did you call him specifically a damn liar or anything of that nature? A. No, sir.

Q. Were you present when he gave his statement? A. Yes, sir.

Q. Who else was present there? A. Agent Whitten.

Q. Just Agent Whitten? A. Yes, sir.

Q. What did he say when you wanted him to make a statement or he wanted to make a statement, what did he tell you? A. He just said he would like to give us the facts.

Q. Did you fellows tell him before you took the statement it could be used against him? A. Yes, sir.

Q. What else? A. Told him we coulun't make any promises to him of any nature.

Q. And it could be used against him in court? A. Yes, sir.

Q. Did you have anything to do, did you interview Ed Simonds? A. No, sir.

Q. You were never present when Ed Simonds was interviewed? A. No, sir.

Q. Were you present when Felton Woodward was interviewed? A. No, sir.

Q. When his statement was taken? A. No, sir.

Cross Examination by Mr. Baker.

X. Mr. Lunsford, when did you get to Copperhill? A. April 26, 1940.

X. What day of the week was it if you recall? A. I don't recall.

X. Do you know whether it was Friday or Saturday? A. No, sir.

X. Where did you go when you got there? A. To the New Yorker Hotel.

X. Did you meet the other agents there? A. Yes, sir, Mr. Plaxico.

X. Did you have any meetings over there? A. Yes, sir, I met him there.

X. Did all the agents meet together there at various times? A. Yes, sir.

X. You usually had a discussion in the morning all together as to what each agent was to do? A. No, sir.

X. What kind of meetings did you have? A. Mr. Plaxico would give me instructions and I would carry them

out, do whatever he said and come back and report and see what else he wanted.

X. You say at no time you had a meeting where all the agents were present? A. They were there from time to time.

X. Did you have a meeting and general discussion as to what each one of you should do? A. No, sir, no general meetings.

X. Was any meeting of that kind held? A. We met from time to time in called meetings.

X. There would be a meeting when all of you were present? A. Yes, sir.

X. What was the purpose of that meeting? A. To get instructions.

X. How many of those meetings did you attend? A. I don't remember.

X. Several? A. Had one the first day.

X. With the Sheriffs, was Sheriff Biggs present at that meeting? A. No, sir.

X. Was he ever present at a meeting? A. Not to my knowledge.

X. Was Roxie Campbell ever present? A. No, sir.

X. You know both of those men? A. Yes, sir.

X. What time of day did you question Earl Hubbard on April 26th? A. In the evening.

X. What time in the evening? A. I don't remember the exact hours, but it was between about 7:30 and 9:30.

X. At night? A. Yes, sir, it was after supper.

X. Where did you find him to interview him? A. In the YMCA.

X. Do you know how he got there? A. No, sir.

X. Did you send for him? A. No, sir.

X. Did you tell anybody to bring him there so you could question him? A. No, sir.

X. Did you know he was going to be over there? A. Yes, sir.

X. How did you know he was going to be there? A. Mr. Plaxico told me he would be there.

X. Didn't tell you how he was going to happen to be there, or go into details about it? A. No, sir.

X. When you got there he was there? A. Yes, sir.

X. Whereabouts, upstairs or downstairs? A. He was on the first floor.

X. Was he in a private room? A. In a little room there adjoining the lobby.

X. And you and Agent Whitten examined him there together? A. Yes, sir.

X. For about two and a half or three hours? A. No, sir.

X. You said seven to 9:30? A. No sir.

X. What did you say? A. 7:30 to 9:30.

X. That would be two hours then? A. Yes, sir, more or less.

X. And during that interrogation Earl Hubbard told you he wasn't guilty of anything didn't he, told you he wasn't guilty, didn't he, and knew nothing about this situation? A. No, sir.

X. Do you mean he told you on April 26th he was guilty? A. No, sir.

X. He denied everything you asked him about it didn't he? A. No, sir.

X. And you told him you knew what the truth was? A. No, sir.

X. If he made some statement to you that you didn't think was right you would say nothing to him about it; did you refresh his recollection and tell him what was right about that? A. No, sir.

X. No such conversation as that was had at any time, you never told Earl Hubbard and Whitten didn't at any time tell him during that interrogation Earl you are not telling us the truth about that? A. No, sir.

X. You didn't go to the extent of saying Earl you must be mistaken about that? A. No, sir.

X. And you didn't say to him Earl haven't you, or couldn't there be a possibility of making a mistake about that—didn't suggest anything like that? A. I asked him for the facts.

X. And when he told you something you didn't think was the fact, what would you say? A. I didn't know, that was the first time I interviewed him and I didn't know what the facts were.

X. You didn't have time to determine what the facts were at that interview, you didn't have any confidential information as to what the facts were? A. No, sir.

X. Did you later get some confidential information as to what the facts were? A. No, sir.

X. When you talked to him on the 30th you told him you knew what the facts were? A. No, sir.

X. And you took a statement from him on the 30th? A. Yes, sir.

X. How long did you talk to him in taking that statement? A. I don't remember the exact time, but it was between an hour and a half and two hours.

X. Did you suggest any corrections he should make in the statement? A. I don't remember any. However, it was read to him and he read it himself and he was free to make or say anything that he wanted to about it.

X. You didn't make any suggestion to him at all as to any correction he might make in the statement at any time? A. Not that I recollect.

X. You knew by that time what the facts were and if he told you something that didn't conform to what was in some other statement did you tell him that didn't agree with what the other statements showed? A. Repeat that, you have two or three questions there.

X. You knew some of the other defendants had already made a statement? A. Yes, sir.

X. And you knew the substance of those statements? A. Yes, sir.

X. While Earl Hubbard was making his statement if he said something that differed with what was contained in the other statements did you call that to his attention there? A. No, sir, I took it as he gave it.

X. And this is his exact language? A. In substance.

X. Is it in his language or your language? A. We wrote it down as he gave it to us.

X. In his exact language then, isn't it? A. Yes, sir, it was his language.

X. You wrote down exactly what he said to you as he went along? A. Yes, sir, substantially.

X. Were you in the YMCA on April 27th, the day after you got there? A. Yes, sir.

X. Were you talking to some of these defendants? A. Probably.

X. Did you see Earl Hubbard there that day? A. The 27th?

X. Yes, Saturday? A. I don't remember.

X. You don't recall whether you saw him there or not? A. No, sir.

(This witness was then excused.)

The witness, C. A. WHITTEN, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

Q. Your name is C. A. Whitten? A. Yes, sir.

Q. Mr. Whitten, what is your profession? A. I am Special Agent for the Federal Bureau of Investigation.

Q. Where are you now located? A. New York City.

Q. How long have you been with the Federal Bureau of Investigation? A. Going on fourteen years.

Q. I guess you are one of the oldest agents in service aren't you? A. One of the oldest, yes, sir.

Q. Where were you stationed in April and March 1940? A. Birmingham, Alabama.

Q. Did you have occasion along about that time to investigate the dynamiting of power lines and poles of the Tennessee Valley Authority in this area? A. Yes, sir.

Q. What County was that in? A. Fannin County, Georgia and Polk County, Tennessee.

Q. In the course of such investigation did you question certain of the defendants? A. Yes, I did.

Q. Which ones did you question? A. Robert Lee Rhodes, Earl Huffman—

Q. Earl Hubbard? A. Earl Hubbard, Robert Ballew.

Q. You didn't question any of the others? A. Yes, some of them.

Q. Specifically did you question Ed Simonds, Earl Hubbard and Felton Woodward? A. I questioned Ed Simonds indirectly more or less—he was present during the questioning of one of the other defendants and I may have asked him some questions.

Q. Did you question Earl Hubbard? A. Yes, sir.

Q. When did you first question him? A. During the evening, I believe between the 26th and 29th—I think it was on the evening of the 26th.

Q. Of April? A. Yes, sir.

Q. 1940? A. 1940.

Q. How long was he questioned by you or any other agent in your presence that evening? A. I will say approximately two hours, might have been a half an hour under or little over.

Q. Did he give a statement then? A. No, sir.

Q. Did he tell you anything you could check up on then? A. His answers were more or less negative. They didn't jibe with the other facts we had produced by the investigation.

Q. Did he ask you about these other facts you had found out? A. Yes, sir.

Q. When did you next question him? A. On April 30th.

Q. Who was present when you first questioned him? A. Mr. Lunsford was with me both times.

Q. No other FBI agent was present? A. Well, one might have come in or out, but they were not engaged in questioning him with me.

Q. Were you present when Hubbard made his verbal confession? A. Well, he made several admissions around several agents there, but I could not say I was; I might have heard it, I don't know.

Q. Were you there when he called for Felton Woodward and asked that Felton Woodward be brought in because he knew more about it? A. I don't know I was there—I heard about that but I couldn't state definitely.

Q. During your interview of Earl Hubbard I will ask you if you or any other agent of the Federal Bureau of Investigation in your presence, or to your knowledge denied to Earl Hubbard the use of his spectacles or glasses? A. No, sir.

Q. As a matter of fact I will ask you whether or not he was wearing glasses? A. Well, I think he was wearing glasses according to my best memory.

Q. In other words, you, nor nobody else in your presence, or to your knowledge denied him the use of his glasses? A. No, sir.

Q. Did you or anybody else to your knowledge ever deny him a lawyer? A. No, sir.

Q. Did he ever request to have a lawyer brought in? A. Not in my presence.

Q. Did you ever deny him any drinking water, if he asked for it? A. No, sir.

Q. What about cigarettes? A. No, sir.

Q. Did he smoke cigarettes? A. I believe he smoked quite a few cigarettes.

Q. Were they manufactured cigarettes or did he roll them? A. Well, I have an impression he rolled them but I couldn't state definitely.

Q. Did you yourself, or did you see anybody else knock a cigarette out of his hand? A. No, sir.

Q. That was not done in your presence? A. No, sir.

Q. Or to your knowledge? A. Definitely not.

Q. Did you or any other agent present when you were questioning this man shove him back in his seat and tell him to straighten up and sit up straight? A. No, sir, no force at all was used.

Q. Did any agent at all ever lay their hand on him? A. No, sir, not in my presence and I am sure I didn't.

Q. Did you or anybody in your presence promise him if he would make a confession and state all about it and make it in writing you would give him a good meal? A. No, sir.

Q. Was any complaint ever made to you or any other agent in your presence about the food he was getting? A. No, sir, on the contrary he complimented the food.

Q. What did he say about it? A. He said it was much better food than he had been receiving since the strike at home—said it was better than he had had at home.

Q. Did he say anything to you or any other agent about the manner in which he had been treated by the agents of the Federal Bureau of Investigation? A. He

was very complimentary to myself and other agents, and also indicated the deputy sheriffs had been nice to him.

Q. Told you that? A. Yes, he was very complimentary—I don't know his exact words.

Q. Did Mr. Plaxico ever tell him he could not smoke a cigarette while he was questioning him? A. No, sir, not in my presence.

Q. Did he ever make a request to see relatives and was denied that request? A. No, sir.

Q. Do you know he did see relatives? A. At his request he was either taken to his wife or his wife brought to him, I don't remember which.

Q. Were you there when the statement of Earl Hubbard was taken? A. Yes, sir.

Q. Was he advised he did not have to make a statement? A. Yes, he was advised he didn't have to make a statement and it would have to be voluntary, and it could be used as evidence in any court of competent jurisdiction.

Q. And he did make a statement? A. Yes, sir.

Q. You know anything about him being sick or having the doctor there? A. I believe he said he had a headache. According to my best remembrance he stated he had a headache on one occasion and I offered to get him some aspirin and at the time I offered to get him some aspirin I believe he said somebody else had gotten it for him. I think possibly that he made some mention of having a headache and some of the other agents or myself said we would get word to the sheriff and I afterwards heard the sheriff had gotten a doctor for him.

Q. Was he rational when he was talking to you—in his normal mind? A. Absolutely. The only thing I know of him complaining of at the time was a headache, but later, between the first questioning and the time he furnished the statement I understood he was slightly sick and I saw him on a cot.

Q. Had a cold? A. At the YMCA building, in one of the guard's rooms—saw him laying on a cot.

Q. Mr. Whitten, did you or any other agent in your presence ever tell Hubbard if he would make a statement that you would, or the other agents would, come to the District Judge and recommend a parole for him or any leniency? A. No, sir.

Q. Was any promise made to him at all for any statement? A. Absolutely not.

Q. Was he told he didn't have to make a statement? A. I believe—I am sure he was. I believe I made the statement myself because I always do; whenever we talk to a defendant in any case we make that statement before we get any statement, that he does not have to make a statement unless he wants to.

Q. In your fifteen years' experience with the Federal Bureau of Investigation did you ever promise a defendant anything for a statement? A. No, sir, that is definitely against the rules.

Q. Did you ever intimidate one or try to intimidate them? A. No, sir, that is absolutely against the rules.

Q. What would happen if the Director of the Federal Bureau of Investigation, or any immediately under him were to hear of a special agent that made that kind of promise? A. I wouldn't state definitely what would

happen in any particular instance, but personally I would be afraid I would lose my job.

Q. Did you question Ed Simonds? A. Yes, sir.

Q. On what occasion did you question him? A. As I stated before he was present during the questioning of Ballew.

Q. When he was questioned did you or Mr. Plaxico or any other agent of the FBI deny to Earl Simonds a lawyer? A. No, sir, I didn't and no other agent that I know of.

Q. Did he ever request of you a lawyer? A. No, sir.

Q. Or anybody else in your presence? A. No, sir, he said to me on one occasion, on May 2nd, when I happened to be in the County jail, that he had not employed a lawyer, nor had his wife or any other relatives that he knew of.

Q. Did you or any other agent to your knowledge take Ed Simonds out of jail at midnight out of bed? A. No, sir.

Q. Did you or any other agent to your knowledge tell him it would be just too bad for him if he didn't talk? A. No, sir.

Q. Did you or any other agent say to him these words: "you got awful damn smart since you spent one night in jail"? A. No, sir, not to my knowledge.

Q. Did you ever call him a damn liar or anything of that nature? A. No, sir.

Q. Anything similar to that? A. No, sir.

Q. Did you ever curse him or any other agent ever curse him to your knowledge? A. Not to my knowledge.

Q. Were you present when Felton Woodward was questioned? A. No, I was not unless I happened to be passing through.

Q. You never questioned Felton Woodward? A. No, sir.

Q. Did Mr. Plaxico ever promise Felton Woodward or did any other agent in your presence promise him if he would make a statement and give a confession they would get his bond out and arrange for him to get out on bond? A. No other agent to my knowledge, and I am sure I didn't.

Cross Examination by Mr. Baker.

X. Mr. Whitten, where is your home, originally, I mean? A. Originally? I was born in Georgia and raised in Alabama.

X. Where did you go to school? A. I went to school in Georgia and Alabama—finished at the University of Georgia.

X. Are you a member of the bar? A. Yes, sir.

X. Ever practiced law? A. No, sir.

X. Now, when did you go to Polk County to investigate this situation—on what day did you first go to Copperhill? A. On April 25th—arrived there about 10:20 A. M.

X. Who did you report to when you arrived? A. H. E. Plaxico.

X. He was in charge of that investigation? A. Yes, sir.

X. Did he instruct you what to do—give you your instructions? A. He gave me instructions, yes, sir, along with other agents present at the conference.

X. Were all the agents there? A. According to my best memory they were.

X. Was any other person present except the agents? A. At the first meeting?

X. Yes? A. No, sir, there would not be.

X. There would not be anybody else present? A. But the agents of the Bureau.

X. Broughton Biggs was not there? A. No, sir.

X. Roxie Campbell was not there? A. No, sir.

X. Now, at a subsequent organization meeting was Broughton Biggs present? A. Not at any regular conference between the agents; they could have been present during a discussion at dinner or lunch or sometime between—

X. But at the time, at no time at a meeting of the agents was Broughton Biggs present? A. I can't say he was not present when the case was being discussed at dinner or something like that.

X. And you fellows advised along with Sheriff Biggs all through the investigation, did you not? A. I couldn't say we fellows did. Mr. Lunsford and myself were given certain assignments and we proceeded to execute those assignments. We saw Mr. Biggs off and on at the YMCA and occasionally at dinner at the New York cafe.

X. Now, when did you first see Earl Hubbard? A. Well, the first interview I think was in the evening, and probably we talked to him twice. The day of the statement was on April 30th, and we talked to him several times before that. I think it was on April 26th, on the evening of April 26th.

X. You remember the day of the week in reference to whether it was Saturday or Friday? A. That we were talking to him?

X. Yes? A. No, sir.

X. The 26th was, as a matter of fact Friday and the 27th was Saturday. You recall whether it was Friday or Saturday? A. I think it was on the evening of Friday. I think it was April 6th.

X. That was the first time you had talked to him? A. I think it was.

X. You talked to him at the YMCA did you not? A. Yes, sir.

X. Was he at the YMCA when you got there? A. I don't definitely remember.

X. Well, if he was not you sent for him then? A. If he was not Mr. Lunsford or myself sent for him.

X. If you wanted to send for a man to talk to who would you tell to get him? A. Either Sheriff Biggs or a deputy.

X. You know those prisoners didn't stay in the YMCA? A. No, sir, they didn't stay there. I don't think they did.

X. And on occasion when you wanted to talk to one you had to send someone else and get him, did you not? A. On occasions, yes, sir.

X. You know whether they were in the city jail? A. I don't know of my own knowledge.

X. Or in the county jail? A. Well, I heard they were in the city jail.

X. Now, on this Friday night you are talking about, how long did you talk to Earl Hubbard? A. I would

say approximately two hours, maybe a little over or a little under.

X. What time did you start examining him? A. Early evening.

X. 7:00 or 7:30? A. Don't remember definitely.

X. Was it after you had had your dinner? A. Well, I couldn't say definitely—might not have eaten until after we got through talking—that often happens.

X. And he told you at that time he didn't know anything about the situation, didn't he—he was not guilty? A. Well, he evaded the question and denied he knew anything about it, yes, sir.

X. That is correct. And in the meantime you had talked to other agents and found out what the facts were about the situation up there, had you not? A. I had discussed the progress of the investigation with other agents, and Mr. Plaxico probably went over some phases of it with us.

X. And you and Mr. Lunsford knew what the facts were then? A. Well, we knew what the facts were as produced by the investigation.

X. And when Earl Hubbard would make a statement that didn't agree with what you thought to be the fact, I will ask you if you didn't tell him that was not true, and you knew it was not true? A. No, sir, I never made a statement like that to him.

X. Did you ever tell him he was not telling you the truth? A. Not that I remember of.

X. Well, when he would, as you say, make some evasive remark to you what would you say to him with respect to his evasive statement? A. I would probably

ask him if thus and so was not the case—don't you remember—was it like this, or in the way I ordinarily question an individual about any incident that the other individual apparently was doubtful about.

X. Your language to him at all times when you were talking to him was just as polite and in the same manner that you are answering questions now, was it not? A. More or less. That is my mode of questioning.

X. And you didn't use, in talking to him, any tone of voice other than like you are talking now? A. I would say that—might have used a different tone of voice.

X. Did you talk loud to him? A. I never hollered at him or tried to intimidate him.

X. You didn't tell him he was not telling you the truth? A. No, sir.

X. At no time? A. No, sir.

X. You know whether he had had anything to eat that night you had him brought over there? A. No, sir, I don't know whether he had anything to eat.

X. You don't have any idea? A. Of my own knowledge, no, sir.

X. Now, you say he could see his relatives if he wanted to—did he, as a matter of fact, see any relative or lawyer or anybody? A. He either saw his wife or she was brought to see him—I remember that definitely.

X. That was on Tuesday, was it not, after he made his statement? A. I believe it was.

X. After he made the statement then you took him to see his wife or sent him to see his wife? A. That might have been the case.

X. But prior to the time he made that statement he didn't see his wife or any member of his family? A. Not to my knowledge.

X. And didn't see a lawyer? A. Not that I know of.

X. And he saw no person whatever except agents of the FBI and deputy sheriffs? A. Well, not to my knowledge.

X. To your knowledge he didn't see anybody else? A. No, sir.

X. And neither did any of the other defendants see anybody else? A. I couldn't speak for all of them.

X. So far as you know none of them did? A. I would not even make a statement about that.

X. During all the time you questioned this man, or any of these men, did you ever see anybody come to the YMCA to see any of them? A. Anybody who was connected with them or related to them?

X. Yes? A. Not that I know of.

X. They didn't see anybody? A. Not that I know of—I couldn't say definitely because I don't know.

X. And that is the only two occasions that you talked to Earl Hubbard? A. Yes, sir, the only two occasions I talked to him with a view of getting information about the case.

X. Now, Mr. Whitten, you said a moment ago you understood a doctor was called for him, and he was sick. Do you know what date that was? A. The doctor was called?

X. Yes? A. Don't know exactly—between the two periods, I questioned him.

X. He was in the YMCA then, was he not, when the doctor was called? A. I couldn't state definitely. I saw him between the two periods of questioning on a cot in the guard's office, and if I said the doctor was there, it would be an assumption, but I saw him lying on a cot.

X. You know whether or not he had been questioned there all day the day the doctor was called for him? A. No, sir.

X. Did you see him there more than one time during the day? A. I never saw him except—unless I saw him passing through or something.

X. That is what I mean—Did you see him there in the building passing through? A. I remember distinctly seeing him lying on a cot.

X. That was late in the afternoon was it not? A. I wouldn't say what time of day it was.

X. You don't know whether it was in the morning or afternoon? A. No, sir.

X. When you took this statement from him, Mr. Whitten, did you suggest anything that he might put in the statement? A. No, sir.

X. Who wrote the statement? A. Either Mr. Lunsford or myself—I would have to look at the statement—I might tell who wrote it if I saw the statement—I have a certain type of typing.

X. Was that statement written in his exact language? A. His exact language used?

X. Yes? A. As far as practicable, I believe.

X. As far as practicable it was in his exact language. Now, I believe you said you talked to Ed Simonds on May 2nd, is that correct? A. Ed Simonds on May 2nd?

X. Yes? A. Yes, sir, we talked to him in the county jail for a short while.

X. And at that time when you talked to him you came to the county jail to get him and bring him over here to the Federal building, did you not? A. No, sir, we did not get him. Mr. Lunsford went to tell him something about getting in touch with his relatives. I don't know exactly what the message was.

X. You did, as a matter of fact, go to the Hamilton County jail to get him and bring him over to the Federal building? A. On that date, no, sir.

X. On what date? A. We didn't bring him over to the Federal building.

X. Well, he was brought over here, was he not? A. Ed Simonds?

X. Yes? A. He was over here one time—he was in my presence when we talked to Robert Ballew.

X. Well, you were at the Hamilton County jail on or about May 2nd were you not? A. Yes sir.

X. And counsel, Mr. Townsend, was present at the time and asked to see Ed Simonds, did he not? A. I don't know that he did.

X. And you told the jailer there in his presence you had a right to see him first, and you thereupon got him and brought him over to the Federal building, didn't you? A. I wish to withdraw that statement, he didn't ask to see Ed Simonds. I can give the details as to what happened.

X. Well, did he ask to see Ed Simonds? A. He asked to see him after we first called for him.

X. You say you had already called for him? A. Yes sir, and he was talking to Felton Woodward, and when he heard us ask to see Ed Simonds then he hopped up and said he wished to see Ed Simonds.

X. And then at that time you got Ed Simonds over his protest and carried him to the Fed. al building. A. No, sir.

X. Well, you did talk to him? A. Yes, sir.

X. Talked to him before he had an opportunity to see a lawyer who was there waiting to see him? A. I don't know about them waiting to see him. They didn't seem to be interested until we asked to see him.

X. Any way you did talk to him before counsel? A. Yes, sir, I saw we talked to him before counsel. We talked to him between the time that intervened between the discussion with counsel and the time I talked to Ed Simonds a few minutes later. He was allowed to see us first.

The Court: What was the date of the preliminary hearing?

Mr. Baker: The 13th.

The Court: 13th of May?

Mr. Baker: The first hearing was set on the 6th and was continued until the 13th.

The Court: Did these five plead guilty on the 13th?

Mr. Baker: No, on the 30th.

The Court: April 30th?

Mr. Baker: April 30th. Then the preliminary was set on the 6th and continued to the 13th.

The Court: Well, were they tried at the preliminary or changed their plea, or what happened? Were they

bound over on that first arraignment, or were they tried and changed their plea?

The Court: They changed their plea and were bound over on the 13th.

The Court: Made bond on the 30th?

Mr. Baker: They made bond on the 6th or 7th, one, after the case was continued on the 6th of May; as I recall the Commissioner reduced all the bonds to $1,000 and they were made by all defendants to appear on the 13th. That is my best recollection of the matter.

The Court: All right.

Mr. Baker: Now, you say Ed Simonds told you he had not employed counsel?

A. He told me he had not employed counsel, nor had his wife, nor any one he knew of. That was after the discussion with the attorneys.

X. Now, in the conversation with Ed Simonds did you tell him he should not see counsel? A. No, sir.

X. Did you tell him you could keep counsel from seeing him if you wanted to? A. Not to my knowledge—I don't remember any such statement.

X. And you told Ed if he did want counsel you could keep counsel from seeing him, did you not? A. I don't remember making any statement like that.

X. You don't know whether you did or not? A. Well, I don't remember making that statement—don't have the slightest remembrance of it.

X. Well, you deny making that statement—do you deny it? A. I said I don't remember making any such statement.

X. Of course, Ed Simonds wouldn't have known whether his wife had previously employed counsel? A. I have no knowledge of what—

X. If he had not seen her for ten days? A. I could not answer for what was in his mind.

X. I say he had not seen his wife for ten days? A. I couldn't make any statement about that, I don't know.

X. You do know, as a matter of fact, he was not permitted to see anybody? A. No, sir, I don't know that.

X. You don't know that? A. No, sir.

(This witness was then excused.)

The witness, R. L. MORGAN, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

Q. Are you an officer of any kind? A. I am a special agent of the Federal Bureau of Investigation.

Q. Where are you located now? A. Greensboro, North Carolina.

Q. How long have you been located there? A. Approximately one year and six months.

Q. Have you ever been located in West Virginia? A. At one time, in 1938, for a period of six weeks.

Q. How long have you been an agent with the FBI? A. Approximately seven years.

Q. Do you hold any degree; are you a graduate lawyer? A. Yes, sir.

Q. Of what school? A. The University of Virginia.

Q. Mr. Morgan, on or about April of 1940, did you participate in the investigation of dynamiting of TVA

power poles in Fannin County, Georgia, and Polk County, Tennessee? A. From the morning of April 26th I participated in the investigation of that case.

Q. You arrived in Polk County on April 26th? A. About four A. M.

Q. What time did you leave there? A. On Sunday morning, around 8:00 o'clock A. M.

Q. While there did you investigate or question rather one Earl Hubbard, one of the defendants, and also Felton Woodward and Ed Simonds? A. Yes, sir.

Q. Which ones? A. I interviewed Ed Simonds, I interviewed Felton Woodward and Earl Hubbard.

Q. When did you first interview Earl Hubbard? A. On the afternoon of April 26th, approximately around five o'clock.

Q. How long did you talk to him then? A. At different periods, ten or fifteen minutes at a time.

Q. Who was present? A. Agent McCabe.

Q. An agent of the FBI? A. Yes, sir.

Q. Who else? A. I don't recall anyone else being present.

Q. When did you talk to him again? A. I talked to him about this case—

Q. I say, when did you talk to him again? A. I talked to him on the 27th.

Q. How long did you talk to him then? A. Well, I would say it was an average of ten, fifteen or twenty minutes at any time I talked to him. For a period of two days, I would say about an hour and a half.

Q. Who was present on the second occasion you talked to him? A. I don't recall. It may have been

Agent McCabe, he may have been there, or other agents. I recall Mr. McCabe was with me the first time.

Q. Only one agent present with you on the second occasion? A. I don't recall. We usually work two together.

Q. I will ask you while you were questioning Earl Hubbard, either the first or second time, or any time you questioned him, did he ever ask for a lawyer, and did you deny him that? A. No, sir, he never asked for an attorney in my presence.

Q. Did you or anyone else in your presence deny to him a cigarette or tobacco? A. No, sir.

Q. As a matter of fact, did he smoke cigarettes? A. Yes, sir, he was so nervous he could break them up, quite a few of them.

Q. Was he rolling his own cigarettes? A. Yes, sir.

Q. Did you see him smoke cigarettes? A. Yes, sir.

Q. Do you know whether or not other agents gave him manufactured cigarettes? A. I don't know. I don't smoke myself, and I did not give him any.

Q. You didn't deny him any cigarettes? A. No, sir.

Q. Did you hear any other agent deny him a cigarette in your presence? A. No, sir.

Q. Did you deny him water? A. No, sir.

Q. Did you deny him food, did he ask for food? A. No, sir. I recall one occasion we asked him if he wanted something to eat, and he said he was not hungry.

Q. Did he make any statement to you, or to any other agent in your presence about the kind of food he had been getting? A. No, sir.

Q. Did he say to you, or to any other agent in your presence, anything about the way he had been treated by the FBI? A. He seemed to be comfortable, he made no comment to me, but the fact he seemed to be well pleased as to his treatment.

Q. Did you or not, or any agent in your presence or to your knowledge, shove Earl Hubbard back on his seat and tell him to sit up straight? A. No, sir.

Q. Did any other agent, to your knowledge, shove him up against the seat, and exhibit to him a pistol? A. No, sir.

Q. Did you ever curse him? A. No, sir.

Q. Did you ever hear anybody else in your presence curse him? A. No, sir.

Q. Did you ever tell him he was a damn liar, or anything similar to that, or did anybody in your presence? A. No, sir.

Q. Did you hear anybody in your presence ever tell him if he would make a written statement confessing his implication, you would see the Judge and see that a parole was granted? A. No, sir.

Q. Or that you would request the judge to grant him a parole? A. No, sir.

Q. Were there any threats or promises made by you or anybody else? A. No threats or promises made to Hubbard?

Q. Were you present when he made his statement? A. No, sir.

Q. Do you remember whether or not he was wearing his glasses while you were questioning him? A. I don't recall.

Q. You did not yourself, or see any other agent deny to him or tell him to take off his glasses? A. No, sir.

Q. When was the first occasion you talked to Ed Simonds? A. I don't recall whether it was late in the afternoon, I believe it was late in the afternoon of the 27th.

Q. April, 1940? A. Yes, sir.

Q. At that time who was present? A. I talked to him the first time alone.

Q. Anyone else come in later? A. No, I left. Someone did come in, I was through talking to Simonds at that time.

Q. Did you ever talk to him on any other occasion? A. Yes, sir; I think I talked to him at the jail—

Q. How long did you talk to him on the first occasion? A. Twenty-five or Thirty minutes.

Q. And on the second occasion? A. Probably about the same time.

Q. Who was present on the second occasion? A. Several agents present, I don't recall which ones.

Q. Did you talk to him on any other occasion? A. Yes, sir; I talked to him at the YMCA.

Q. On the third occasion? A. The second occasion, I talked to him two times, I would talk to him probably a few minutes and leave and come back and talk to him again.

making the statement. It is necessary to make some mention—of course, there will be many people at different times in the hotel. Overruled—go ahead.

A. "After the individual had gone I left and went on home and worked a while on the car, and decided to take another individual along so it would not look suspicious."

Mr. Badgett: You can say that.

"So I decided to take my wife along."

The Court: Who is that?

Mr. Badgett: The man's wife, and he was reading individual.

Mr. Lipscomb: I think it has been ruled to leave that out.

Mr. Badgett: No, the man is talking about his own wife.

Mr. Townsend: Your Honor has not heretofore permitted them to name any individuals.

The Court: No.

Mr. Badgett: This man who is making the statement said he took his wife along.

The Court: I think he ought to use the word individual all the way through.

Mr. Badgett: His wife is not indicted.

The Court: I think you had better use individual all the way through—don't think that is material about his wife.

Mr. Badgett: It would be very material.

The Court: Why?

Mr. Badgett: If you will excuse the jury I will tell you why.

The Court: Well, come up here and tell me.

(Counsel thereupon conferred with the Court.)

The Court: Go ahead, I don't think it is so material. That was the instruction to call everybody individuals except this man and the other two men who heard the statement.

A. "I also took an individual along. Another individual who works for the Holland Furnace Company lives on Newton Street in Chattanooga, and I figured the individual that went with me could spend the night with them. We left here about 5:00 P. M. and we got there about dark and went first to this individual's home, and I went on down town to the Key Hotel. I asked the clerk the number and another individual and I took the elevator up and I think it was on the fifth floor. I figured the individual's wife was there and this is the reason I took a certain individual down to the hotel, as this individual wanted to see the town. We went to his room—the individual's room and he and another individual were there. We just talked about things in general. A certain individual—"

Mr. Badgett: You can name him.

Mr. Townsend: No, I submit he cannot name him under your Honor's rule.

Mr. Badgett: Your Honor please—

The Court: Have you a copy of this?

Mr. Badgett: Yes, I would like to thrash this thing out.

The Court: Well, the Court has ruled, and now rules, nobody can be mentioned in this except these two de-

fendants who were said to be present and the man who made the statement.

(Mr. Badgett thereupon handed the Court a copy of the paper.)

The Court: I don't think that name is material, go ahead.

A. "A certain individual was going to speak at the County Court House that night and we went up to hear him. He is a labor conciliator. He talked about an hour; before we went to the talk an individual called another individual's room by phone and this individual and I went down one floor in the hotel to the other individual's room, and left the other individual in another individual's room. This individual was in the room alone, and we didn't talk any business and all of us went to the talk. After the speech the individual and I talked to the other individual in his room and the individual told that individual the powder would be taken to Copperhill by me and the individual told me it was in his car. This individual got to figuring that we didn't have enough powder and fuse so he suggested that the other individual go to Bessemer, Alabama, and get some more dynamite. I had parked by the hotel around 6:00 P. M. and this individual was in the Hotel lot. The individual told me to go to a Gulf Filling Station about two blocks from the post office—this filling station was either on Broad or Market, and wait for him and he came there in the other individual's car. I looked at my oil in the station and the individual drove in and handed me a burlap sack and said "here is that sack of potatoes." It contained the case of powder and I locked it up in the trunk of my car.

An individual was with me at this time, and we drove to another individual's house and spent the night and the next morning I told this individual I was going to be away that day but didn't tell that individual anything about our business. Another individual came out and picked me up that morning—now this is a certain automobile, Your Honor, shall I give a descriptive data of this car?

The Court: No, I don't think so.

A. "In a certain automobile, such and such color. It had Alabama license—"

Mr. Townsend: Now, your Honor told him not to describe the automobile.

The Court: I think the witness is doing his best to observe the precautions, I have given him how to read it. I wouldn't describe that.

A. "We left Chattanooga about 9:00 A. M. around Tuesday or Wednesday, that is April 9th or 10th. The other individual stayed at the hotel. We arrived in Bessemer in the early part of the afternoon and drove out to this individual's house and got some mail, and I later met an individual there and this individual and I went to the Labor Hall in town and there the individual introduced me to a man who had a certain automobile, a man who had a certain automobile."

The Court: Skip the next sentence.

A. All right sir. "I don't remember this man's name, and don't know whether he is located at the Union Hall or has a job some where. This man told the individual I could take his car out to the Hercules Powder Company to get dynamite, and this other individual told me

I could get it without having to sign anything. I drove to the Powder Company alone and went to one of the office buildings, and told them I wanted to buy three cases of 60% dynamite and 500 feet of fuse. I also got a box of caps, and all of it cost a little over $21. The man who sold it to me didn't ask me what I was going to do with it and I signed my name on a sales slip as 'John M. Cash.' The man who sold it to me was in his thirties—rather short and heavy set and had sun glasses—heavy set and sun glasses. On the road back to town I got an individual and another man and transferred the powder and all into the individual's car. We drove back to the individual's house and spent the night and he and I left the next morning about 8:00 and got to Chattanooga about 1:00 P. M. We drove to an individual's home and there transferred all of it into my car. I was afraid to take a certain individual in the car with me so another individual and I brought this individual back to Copperhill and got here just a little before dark. The next morning the individual and I left Copperhill for Chattanooga. This individual took me back to Chattanooga to a certain individual's and we arrived about noon and an individual left me and I took the load of powder in my car and drove to Dalton through Ellijay, Georgia, and then to an individual's place near Copperhill on the Georgia side. A certain individual took an individual back to Chattanooga with an individual and me, and also another individual went as far as Chattanooga, but didn't return with the individual and me. The individual and I stopped at an individual's house about 6:00 P. M. and we drove into the woods near his house and they—certain

individuals, took the power into the woods and hid it while I stayed in the car. The individual stayed with another individual after we got to Chattanooga and I don't know where he and the other individual went. On the way to Chattanooga that morning to get my car we four met at the Union Hall in Ducktown.

On Sunday April 14, 1940, about 9:00 A. M. I picked Ed Simonds up at his house and took him and an individual to another individual's house in North Carolina. Ed got out of the car and talked to an individual a few minutes and I don't know what he talked about. I brought Ed back home. I stayed around the house a while and drove to Isabella and saw an individual at the picket line, and that individual said they wanted to see—and that individual said that they wanted to see the lines shot early that night. I then drove with an individual later in the afternoon—that individual was home alone and I told him it was desired that the lines be blown up early that night. He said he would handle the Parksville end around 9:00 P. M. An individual and another individual knew where the powder was. I then went and picked up Ed Simonds and carried him to an individual's house and let him out, and then another individual and I returned home and went to bed. A few days before the last dynamiting, which was on the early morning of Wednesday, April 24th, there was a meeting held at the union hall in Isabella, and those present were Ed Simonds, Earl Hubbard and some other individuals. It was decided to blow both lines again and Ed Simonds was to handle the Blue Ridge end. The understanding was that certain individuals were to handle the Parksville end.

On Monday morning April 22, 1940, Earl Hubbard and another individual and I drove to Barnes Chapel and picked up an individual and stopped at another individual's house and ate lunch and left some dynamite that Earl Hubbard and another individual and I had taken from the woods. Earl Hubbard and another individual and I came back to Copperhill. The individual knew that the dynamite had been placed in his garage by us.

I heard no more about the dynamite and had nothing to do with it and went to bed Tuesday night about 10:30 P. M. and Wednesday morning I was picked up by Deputy Sheriff Roxie Campbell.

I have read this statement and it has been read to me and it contains the truth.

(Signed) Felton M. Woodward.

Witnesses: N. H. McCabe, E. M. Hevron and R. T. Mann, Special Agents of the Federal Bureau of Investigation."

The Witness: I was present on the preceding day when a verbal statement or admission was given by Felton Woodward. His verbal confession did not differ in any material respect from the statement I have just read. I remember the verbal confessions of Earl Hubbard and Ed Simonds. Earl Hubbard in the presence of Felton Woodward and Ed Simonds stated he had attended a meeting about the middle of the month, that is, in April, and had received instructions at this meeting to make a trip over into North Carolina, Cherokee County, and help take some dynamite over there. He also stated that he had received specific instructions as to what part he was

to take with respect to the proceedings as outlined before, in the presence of Earl Hubbard, Felton Woodward and Ed Simonds, made a confession and stated that at the first dynamiting, which was on the McKaysville, Georgia, side about midnight March 31, April 1st, he had gone there in company with certain other individuals, and that Felton Woodward had taken him over there in a car, and went to Jim Allen's home and had let him out, with other individuals. Prior to that time they had gone to a place on the Georgia side and secured a brace and bit in order to bore holes in wooden poles located near Jim Allen's place, the poles suspending power lines; that he, together with other individuals, had bored these holes in the poles and there placed the dynamite with a considerable portion of fuse. He stated that the fuse had been of greater length, particularly in view of the fact it would give them time to get away from the scene of this dynamiting so their activities could not be construed as being connected with the dynamiting in any way, and that it was probably a mile or so after they had lit off the fuse that the dynamite went off. In other words, they had a sufficient amount of time to clear themselves away from that particular vicinity. He stated he then went home and went to bed. On the second dynamiting which took place on the Georgia side on April 14th, about 9:45 P. M. he and some other individuals had gone up to this tower, which at this time was a steel tower, having four legs, and they placed sticks of dynamite around three legs of this tower, and that the individuals who had accompanied him got cold feet, so to speak, got scared and left, ran off and left him to handle the dynamiting of this tower on

the night of April 14th by himself. He finished the dynamiting of this tower and went on home. He later went to a place over on the North Carolina side, in Cherokee County, and obtained some dynamite, together with some other individuals, from a garage at someone's home there. That was on or about Monday the 21st of April. They took this dynamite up in the woods late that night, and later that night placed the dynamite at a tower, another steel tower on the Georgia side, three or four miles from Copperhill. After planting 25 sticks of dynamite at each foot of this tower, they found out the fuse which they had taken with them from North Carolina the day before had become considerably wet, but the fact they had laid out in the woods that night, it had rained a considerable part of that time, and that it was necessary for them to cut off the fuse into shorter lengths, so when the explosion took place at one thirty A. M. on the morning of April 24th, that they hardly had time to clear the scene of the explosion, and debris, rock and gravel had been blown up almost upon them, and they feared that someone at first had seen them; they all had shot guns with them and they immediately stopped and started pointing their shotguns in the direction where the dynamiting had occurred. They had not anticipated that the dynamite had gone off prematurely, they had placed a short amount of fuse, a shorter amount than they had before, and they became so scared they jumped in a ditch and laid there for a short period of time, they went on from there, upon becoming aware that it was the dynamite, and later went on home. They did not go home

immediately, but separated and went home individually, so as not to cast suspicion of being together after this dynamiting, which was on the early morning of the 24th of April.

I went to a bridge that goes over the Toccoa River, a bridge of the L & N R R, with Mr. Roche and Mr. Hood and a deputy sheriff and Creed Brock, another deputy sheriff and in Mr. Brock's car on the morning of May 7th. I took some pictures out there at that time. I identify the picture you have shown me. That is a picture of the far side of the bridge that I took while standing in the water. I file that as Exhibit No. 1 to my testimony. This picture you have passed me is a snapshot I made there of two deputy sheriffs and Mr. Roche while they were standing on the Copperhill side of the trestle in the direction of Copperhill. I file that as Exhibit No. 2. The picture you just passed to me is a picture I took on the bank opposite the Copperhill side of the area beneath the middle span, approximately the middle part of the bridge. I file that as Exhibit No. 3. The picture you have passed me was taken on top of the trestle of a little sand bar which had accumulated at one of the abutments of the bridge and the water next to it. I file that as Exhibit No. 4.

The picture you just passed to me was a picture taken from the top of the bank and shows the stream portion of the Toccoa River. I file that as Exhibit No. 5.

The group of pictures you have just passed to me were pictures taken from other positions. I will file these pictures as a group, as Exhibit No. 6. This group of pictures reflects the steel structure which was blown

up on the Water Level Road about six miles from Copperhill, in the direction of Benton and are all pictures of one tower. They represent one tower that was blown up and holes made by dynamite under the tower. I will file that group of pictures as Exhibit No. 6. This tower was blown up about 9:15 in the night of April 14th.

The pictures you have just passed to me are pictures which I took on the occasion when these pictures were taken when an auger was found in the stream, near the surface of the stream. It could be seen while standing on top of the trestle, the water was rather shallow, and the outlines showed in the water under the trestle. I could see it before I went down there. I will file that as Exhibit No. 7 to my testimony. When I found the bit the point was down stream, was down stream as I recall, by the point I mean the business end of it.

Cross Examination by Mr. Baker.

I first went into the copper basin on the night of April 17th, in company with Mr. Roche and stayed there until the 30th of April and all during the time I was there we were busy investigating these explosions. The first person we contacted when we went into Polk County was the Sheriff of the County, Broughton Biggs. We did not contact Roxie Campbell immediately, it was some time the following day, I don't remember just exactly when. When we first arrived there we contacted the sheriff and he naturally suspected certain individuals. Shortly after that time we contacted a man named Freed Long. Sheriff Broughton Biggs brought Freed Long to see us. He brought him to see us about 3:30, I don't

recall the exact date, I can look at my calendar and see. It was on the 22nd day of April, about 3:30 in the morning, at Copperhill. We contacted him at the New York Hotel, the Sheriff told us he had him there and I drove over there to see him. I was not in town that day and we discussed the case with the Sheriff that morning at 3:30 and at that time the Sheriff and Freed Long advised us the lines would be blown again the next night at 1:30 and as a matter of fact the explosion was at 1:17 on the Georgia end of the line. When we got the information we did not make any effort to stop the explosion. It would have been practically impossible to patrol 26 miles of the Tennessee side and 12 miles on the Blue Ridge end. It would have taken an army to do so, so we couldn't stop it on that account. I didn't contact the Sheriff of Fannin County, Georgia, and notify him that I anticipated the line to be blown in Georgia that night. I don't know whether Mr. Roche and others did or not. As far as I was concerned I made no effort whatsoever to prevent the explosion and as far as I know Sheriff Broughton Biggs did not. I didn't have Sheriff Biggs pick up any individual so I could talk to them on or about the 24th of April. At no time did I request Sheriff Biggs to pick anyone up. The Sheriff said he would make them available but not on any request I made of him. He just volunteered the information that he would make the men available. Those men were then picked up and put in the YMCA. I first talked to Felton Woodward on Thursday afternoon, April 25th, at the YMCA in Copperhill. As I recall Mr. Roche and Plaxico were with me at the time. Broughton Biggs was not

present when I talked to Felton Woodward. I don't recall whether the company guards were stationed in the YMCA at that particular time or not. There were usually some around there all the time in the building, going in and out. I don't know whether the guards were rooming there or not. I was not in the rooms at any time. I don't remember whether the guards were armed or not. I was not armed at any time. I think quite a few people carried firearms, I imagine they did. I don't recall that there were any shotguns displayed and rifles in the room where I questioned Felton Woodward. I recall one room did have some. As I recall they were in the cases and not in the open. I couldn't tell you whether the door was open or closed when I talked to Felton Woodward. It is entirely possible that the door could have been opened. I judge I talked to Felton Woodward on the 25th of April about an hour and a half, sometime in the afternoon. I didn't talk to him again on the night of the 25th and I don't know whether other agents talked to him or not. I can't say whether other agents talked to him on Thursday night, Friday and Saturday, I was not there all the time. I don't recall seeing him at the YMCA building on the 26th and 27th. I don't recall who brought Felton Woodward to the YMCA; I don't know whether he spent the night there or not, I presume he stayed in the room provided by the Sheriff's office. I don't think he was taken to the county jail at Ducktown and I don't know whether he stayed in the county jail in Copperhill or not, I didn't talk to him there. Felton Woodward didn't complain to me if he didn't have anything to eat on the night of the 24th.

He made no complaint to me about being hungry on the 25th, 26th or 27th. If he had made complaint to me about not having food I probably would have taken some action to supply him with it. I never made the statement to Felton Woodward that if he would make a statement like that, like we wanted it, we would recommend to the District Judge that he be placed on probation or parole. I know I didn't make such statement to him and never heard Mr. Plaxico say anything like that to him. I don't recall any conversation we had at all in reference to getting him a low bond. I didn't hear Mr. Plaxico tell Roxie Campbell, Chief Deputy Sheriff of Polk County, if any of these defendants came clean that he, Plaxico, would recommend to the court or to the Judge that they be placed on probation. I never heard a conversation of that kind at any time. I didn't recommend to James H. Anderson, United States Commissioner, that the bonds of Earl Hubbard, Felton Woodward and Ed Simonds be fixed at $1,000. I didn't recommend to Commissioner Anderson that the bonds of certain of the other defendants be placed at $3,000. I have no recollection of making any statement like that any time to Mr. Anderson. I did see Mr. Anderson on the 30th day of April at the County jail at Chattanooga, Tennessee. I was up there to find out what the bonds were. He had already started disposing of them when I got to the jail. I was in court to testify regarding another case and got up there late and I asked him while he was sitting at the desk in the corner of the room where the defendants were if he had set bonds, so I could make a record of what the bonds were. I didn't make a recommendation

to Commissioner Anderson on May 3, 1940, that Felton Woodward's bond be reduced from $3,000 to $1,000. I was in Knoxville on May 3rd all day and I didn't make such recommendation to Commissioner Anderson at all and I do not know whether anyone else did or not.

It took about from approximately eleven o'clock in the morning until two o'clock in the afternoon, at which time we recessed for lunch and came back at 3:30 and up until 7:30 in the evening, a total of about seven hours, to take the statement from Felton Woodward. Felton sometimes had difficulty in remembering the details of the statement. We didn't prompt him as to what the details were, there was nothing we could prompt him about except as to the dates the different explosions occurred. The only thing I could do was sit there until he got his facts together to make a statement, to get his wits together so he could make a comprehensible statement. He wanted to make a clean breast of it, and that is why it took five typewritten pages and took him seven hours to remember the details. When I first talked to Felton Woodward I told him our investigation had indicated that such and such was true and I told him our investigation indicated what the truth was. I don't think I told him I knew what it was but I would remark what our investigation tended to show. I didn't know and couldn't know what the truth was. When he would make a statement that disagreed with the facts our investigation showed I told him I want you to reconcile your previous irreconcilable remarks, those things that didn't have any rhyme or reason to them, that he would take back in a few minutes, or later and it took so much time.

We wanted a logical picture of it, as the result of our investigation. When Felton made some statement I didn't think fit in to the logical picture as we had developed it from our investigation, I would suggest that he tell the truth and give in logical sequence the events which had happened. When I got a statement from him that fit in with this logical sequence of events and which complied with the information developed by our investigation, I was satisfied that he was telling the truth. When he finally made a statement that fit in to the logical sequence of events as it resulted from our investigation, and not what I thought about it personally, and based on our investigation, we thought that it was right. The confidential information which we had at that time came from Freed Long. I presume Broughton Biggs brought Freed Long to see us. Broughton Biggs was there with him.

I talked to Ed Simonds the same day I talked to Felton Woodward, on the 25th of April, 1940. I would judge I talked to him approximately an hour or maybe an hour and a half. I talked to him again on the night of April 25th. The next time I talked to Ed Simonds was the night of April 28th, Sunday night. I don't know whether other agents had talked to him in the meantime. I do know Mr. Roche and Mr. Plaxico had questioned him and obtained a confession from him on Sunday night. When I talked to Ed Simonds on April 25th, I told him in substance the same thing I told Felton Woodward, I told him that when he made a statement that didn't fit into the logical sequence of events I would tell him that it didn't fit in, and when he did make a

statement finally that fit in with the logical sequence of events it was satisfactory as a statement. I didn't take the confession from him, I had nothing to do with taking the written confession. Mr. Roche did that. I was there immediately after he had gotten through and talked to him there. I never called Ed Simonds a damn liar or anything like a son-of-a-bitch or God damn liar. I don't use profanity. If he made a statement that I thought was not correct I would tell him that he was making remarks that were ridiculous, had neither rhyme or reason, to get his facts straight and tell the truth about it, but I never at any time called him a liar and didn't hear Plaxico call him a liar and didn't hear anybody curse him. I didn't hear Mr. Roche curse him or call him a liar.

As I recall, we had a meeting of the agents at the New York Hotel on the morning of April 25th. As best I remember Broughton Biggs was not present at that meeting. He was present at two or three meetings after that, I don't recall. When Mr. Roche and I went there we had a meeting of a few agents together. I don't recall after the 25th of having a meeting when all the agents were together when Sheriff Biggs was present. I know the agents were together on the morning of the 25th and the Sheriff was not there. If I testified that day before yesterday I was in error and mistaken. I don't recall being at any agents' meeting when Sheriff Biggs was there. I don't recall having a meeting on the 25th of April when he was there. I didn't testify he was there at the organization meetings on day before yesterday. When Mr. Roche and I went there you asked if Mr.

Roche and I were there at a certain time after which time Mr. Plaxico came, and asked if we had meetings and I understood you meant between him and me and Mr. Plaxico, which we did up until that time and that is my explanation of what I testified. It was Sunday night April 28th when I talked to Ed Simonds, Felton Woodward and Earl Hubbard and probably six, or seven or eight o'clock. I talked to them myself, half an hour or so. I don't recall that Earl Hubbard was sick. I had previously talked with Earl Hubbard on Thursday the 25th, in the early part of the afternoon, one or two o'clock and that is the only time I talked to him prior to Sunday, April 28th. I was not around the YMCA building on the 27th of April and don't know whether Earl Hubbard was there or not. I don't know whether Earl Hubbard, Ed Simonds and Felton Woodward ever had a place to sleep or not, I couldn't say, but I heard no complaint from him about it. Ed Simonds didn't ask me for a lawyer and neither did Earl Hubbard or Felton Woodward. They never asked me or anyone for a lawyer. The best of my recollection is none of the defendants ever asked me if they might see a lawyer. I don't know whether their wives, children, fathers or mothers could see them on the 24th, 25th, 26th or 27th of April. I didn't see anybody in the YMCA, however, except deputy sheriffs and FBI men. There could have been other people there but I don't know their relatives. As I say I don't know all the deputy sheriffs, and there could have been his father or some member of the family there. As far as that is concerned, I didn't see any young children there and don't recall that I saw a woman there. I didn't leave word at

the Hamilton County jail that these defendants were not to be allowed to see their wives or families or counsel and I do not know whether such order was left by anyone or not. I know Agent O'Conner, the last I heard of him he was stationed somewhere in the West. He was stationed in Chattanooga when the men were admitted to the Hamilton County jail and stayed here sometime after that. The first time I ever went down to the river where this auger was retrieved was on the day it was retrieved. I didn't go down with Ed Simonds and don't know about it. I understood he went with Agent Roche and pointed out the location where it was thrown in. It was on Tuesday, the 7th of May, that we retrieved the auger and we took the pictures. My understanding was there was high water and we waited for the water to recede. The place where we found the auger the water was not swift. I walked practically half way across the stream but that was when it was low. I would say the water was less than a foot deep at the place where the auger was found. The auger was lying in the stream with the business end pointing down the river. My understanding was that the auger was thrown in the river right after the dynamiting there near McKaysville, which was the first explosion on the Georgia side. I hardly think the point of the auger is in the identical shape now as it was when it was taken from the river. There was considerable amount of debris and mud on it and it is probably a little bit cleaner I might say. I would say it is cleaner, having been handled. I wouldn't say the point was as bright as it is now. I can't say it is in the same shape as now. As I recall there was a considerable amount

of mud on the whole bit. The auger was found about the middle of the stream, that is the middle of the slough across from the little island towards the road. Creed Brock went out there with us the day we got the auger. I don't recall his being out there on any other occasion. He possibly could have been but I don't recall it. Creed Brock didn't retrieve the auger. The man standing with the auger in his hand and I took the picture immediately after he took it from the stream. The man who did that is Hood.

The Sheriff took these various prisoners in custody so we could talk to them, so all of us could talk to them, so they would be available to the agents and the sheriff and they could talk to them and that was the purpose in taking them into custody.

Re-Direct Examination by Mr. Badgett.

The paper you have shown me is Field Division Form 1 used in our office which we sign any time we come to work and is an official record of the Bureau of Investigation office at Knoxville. I have looked at this register and the various agents arrived at the office in Knoxville on May 3, 1940, as follows: Mr. Bird arrived at the office at 7:55 in the morning; Agent McInerney at 8:35 in the morning; Mr. Bonham 8:40; McDonogh 8:42; Hevron 8:45; Roche 8:45; Wiltse 8:47; Mann 8:50; Plaxico 8:55. I checked in the Knoxville office on May 3rd, at 8:50. The paper you have shown me is Knoxville Field Division Form No. 3, showing the time the agents signed in and out of the office when going out for any particular purpose. I have examined the record and I left the office

there at 7:05 P. M. on the night of the 3rd and this is an official record of our office. It is a record that shows the leaving of the office on the part of agents and his return during the course of the day. Any time an agent leaves the office during the day he would let them know where he was going. I have examined the record and the record shows only, the only time I left the office on that day was at 12:40 until 1:30 in the afternoon at which time I went out to lunch and that was at Knoxville, Tennessee. I had lunch that day at the S. & W. Cafeteria at Knoxville, Tennessee. I receive expenses any time I travel. The money is paid by the Government. From May 1st, until sometime later, the trips I made from Knoxville to Chattanooga, as shown by the records is as follows: I left Copperhill at 9:45 the morning of May 1st and arrived at Knoxville 7:30 P. M. that night; left Knoxville May 6th at 9:30 in the morning and arrived at Chattanooga at 11:30 that morning. Left Chattanooga at 4:30 that afternoon and arrived at Copperhill at 7:45 that night. Between those dates I had absolutely no other account for travel and the Government has paid me for this travel period.

I was present when Earl Hubbard, Felton Woodward and Ed Simonds made their verbal confessions and with reference to the treatment they received they said they had never received any better treatment in their life since the strike had begun back in July of 1939, that the food they had received at the Sheriff's place of detention was the best they had had during that time of almost a year. It took so long to take Felton Woodward's written statement because of the fact he insisted he wanted to give

a complete, true and detailed statement as to everything that took place, as he said in his own words he wanted to make a clean breast of the thing and get it off his shoulders and in view of the fact as he stated he had been worrying considerably over what he had done and he couldn't collect his wits so to speak, couldn't collaborate and for that reason it took unusually long time to get his details right as to what time certain things took place. I sat there and waited for him to make up his mind in instances. I would ask him a question and sometimes it would take five minutes before he could make up his mind as to what happened and in those instances it was often that he wanted to amplify or modify a certain statement.

Re-Cross Examination by Mr. Baker.

I never told Felton Woodward what not to put in the statement. At the time I took the statement it was voluntary and his statement. He got something to eat on Monday when he was making that statement. I asked him if he wanted to eat and he said he thought he would and we recessed for lunch and came back in an hour and a half. I didn't see him eat but didn't hear him make a complaint when we came back about not getting anything to eat. Felton Woodward said that since he had been out on strike he said something about getting food from the Union, giving all the strikers a certain amount of rations each week, that they went to the union hall on Tuesday and got their pro rata share of supplies. I didn't tell him he ought to go back to work and forget about the strike. That was out of our province and I was not interested in the strike at all and I didn't tell him that

he ought to go back to work and I never made a statement to him that strikes lead to killings and that I was down there to stop the strike.

(This witness was then excused.)

The witness, THOS. F. BAUGHMAN, being first duly sworn testified as follows:

Direct Examination by Mr. Badgett.

My name is Thos. F. Baughman, I am a Special Agent of the Federal Bureau of Investigation. I am assigned to the technical laboratory, as such technical man my job is the examination and construction of firearms, explosives and fuse. I have studied fuse, the construction of it for several years. I studied the manufacture and construction of fuse in the plant of the largest maker of fuse in the country, the Ensign-Bickford plant at Simsbury, Connecticut. I have also read a great deal about it.

I have been a technician with the Bureau of Investigation something over twenty-one years.

In April or May I received certain fuse from the Knoxville office of the Bureau of Investigation, the first was dated April 25, 1940. The fuse marked Knoxville Exhibit No. 1 which you have passed to me is a piece of fuse which was received as Specimen Q-1 in the laboratory, and the second fuse passed me which is marked No. 2 was listed as specimen Q-2, similar to the fuse I examined and appears to be the same.

After full examination of that fuse I was not able to definitely determine the make, because the fuse had been burned. There are two makes of fuse which are identical up to the center core. The core of this was

missing, because this had been burnt. This one, it is one of the two brands, either Crescent Brand, made by the Enright-Bickford Company, or Eagle Brand fuse made by Bright in Michigan. Those are the only two fuses in the United States made like that. The piece of fuse, Knoxville Exhibit No. 3, which you passed to me is similar to and appears to be the piece of fuse I examined in the laboratory in April, 1940, and Exhibit No. 4 appears to be a piece similar to one which I examined as Exhibit No. 4, 4Q. From my examination of this fuse I determined it is what is known as Orange Wax fuse made by Enright-Bickford. No other company makes that type and I am positive it is Orange Wax Fuse, manufactured by the Enright-Bickford Company. It is a very popular brand of fuse and is a great deal of it made and sold. I have my exhibits here with me and I will explain to the jury how I reached the conclusions I have testified about, as follows:

In the construction of fuse there are a number of structural materials used in the manufacture. In the examination of fuse the fuse is broken down; various structural materials are taken off one by one. The one here, which is the white piece of fuse, is a piece of Crescent Brand fuse made by Enright-Bickford. The structural material here exists of first an outside coat of what is known as white single clay finish and then there are these strands of cotton, ten strands of cotton threads around them—I work from the outside down as you take it off—and then there is some cotton and the next solid material is a cloth sheet. Under that cloth sheet there is a dark waterproofed material. Under that waterproof

material are five strands of cotton again wrapped around a core of powder and a number of strands of jute. The jute and the cotton material hold a core of powder in the center of the fuse. Inside the core of powder is what is known as the center thread. This is put there for two purposes, first as an aid in feeding the powder in to the fuse as the fuse is made on the machine and second the center thread gives it its identifying characteristic. The center thread is destroyed, is burned as the powder burns and the thread is burned and in the samples I examined the center thread is not present. That is the only identifying characteristic between the Crescent Brand and the Eagle Brand.

The Orange Wax Clover Brand of fuse, yellow or orange color is made by Enright-Bickford, and is this piece of fuse here. The construction is in general the same as Crescent Brand but the materials are different. The Crescent Brand has a cloth sheet where the Orange Wax Fuse has crepe paper. There is an orange colored fuse made but no other fuse made in the United States with the Orange Wax and crepe paper. These specimens Nos. 3 and 4 are crepe paper fuse.

Cross Examination by Mr. Baker.

Orange Wax fuse is a very well known Brand of fuse and is sold almost everywhere all over the country. It may be purchased in almost any place where explosives are sold and it is used very frequently in the mines, because it is waterproof fuse. The other brand, Crescent Brand, is also a popular fuse and is sold all over the country. Eagle Brand is not sold so widely, because there

are smaller quantities of it manufactured. Orange Wax fuse burns at a standard rate of 120 seconds per yards, with 10% variation allowed either way, 40 seconds per foot, Crescent brand burns at a standard rate of 90 seconds per yard, with 10% variation. In all fuse they allow 10% variation as to the time which it will burn.

(This witness was then excused.)

The witness, H. E. PLAXICO, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is H. E. Plaxico. I am a Special Agent of the Federal Bureau of Investigation and was such agent and have been for more than seven years. I am a graduate of Citadel in South Carolina, and the American School of Commerce in Atlanta, Georgia. I was born and raised in South Carolina and am now stationed in Washington, D. C. During the latter part of April, 1940, I participated in the investigation of the dynamiting of certain Government property in Fannin County, Georgia, and Polk County, Tennessee. I had occasion during that investigation to question Ed Simonds, Felton Woodward and Earl Hubbard. I was present when Earl Hubbard, Felton Woodward and Ed Simonds made verbal confessions or statements. Felton Woodward and Earl Hubbard were present when Ed Simonds made a verbal confession and neither Felton Woodward nor Earl Hubbard denied what Ed Simonds said but on the contrary they agreed. Ed Simonds told me that towards the latter part of March, 1940, that Felton Woodward came to his home amd told them that they had decided to stop the produc-

tion of the Tennessee Copper Company and had decided to blow up the TVA power lines from both the Parksville and Blue Ridge sources in order to completely cut off the source of power. Felton Woodward said he had been selected, Ed Simonds, to participate in the Blue Ridge line and asked if he would be willing and Simonds said he was willing. On March 31st or about that date Felton Woodward came to Ed Simonds' home and picked him up in his automobile, Woodward's, and at that time there was another individual at the home and they went into Copperhill and picked up another individual and then they went to Ducktown and went to another individual's home where they got some dynamite, and went back, or right across the State line into Georgia and they borrowed a brace and bit from two other individuals whom they told what they wanted to do with the brace and bit and then Felton Woodward carried Ed Simonds and the two individuals with him over to McKaysville, Georgia, and let them out. Ed Simonds said he and the other two individuals located two wooden TVA power poles that they selected to dynamite and that he and the other two individuals with the brace and bit bored holes into the poles and place one and a half stieks of dynamite in each hole and attached about 50 feet of fuse to each pole and the three of them lit the fuse and they walked off and went home. He said that they heard the explosion from Parksville end go off before theirs went off. Shortly after that, approximately on or about April 14th, Felton Woodward came to him again and told him they had decided to blow up the power lines again and that he had been selected again for the Blue Ridge line. Two other

individuals were selected to assist him in the dynamiting. On that night, on April 14th, Felton Woodward came to him and they went to these other two individuals' home who were supposed to assist them and they got the dynamite from a hollow stump near these individuals' home and they went again to the power lines located in Georgia and selected a steel tower this time. They had approximately 50 sticks of dynamite and approximately 100 feet of fuse. Ed said that he started placing the dynamite on each leg of the steel tower, and that about this time the two individuals with him ran off and left him. He said on the way up to the power poles that these two individuals had remarked several times that they thought they heard somebody coming or thought they heard somebody in the bushes and that on one occasion when the two other individuals asked if there wasn't something in the bushes or if they didn't hear something Ed Simonds told them no, it was just their heart thumping and that they were scared and he was scared too. However, they went on up and after he had tied approximately 13 or 14 or 15 sticks on each leg of the pole, as I stated, the other two ran off, he said and he went on and completed the job and lit the fuse and left.

On or about April 18th Ed said that he was contacted by an individual and told to go to the Union headquarters at Isabella, Tennessee, that they were going to have a meeting, so he went to these meetings and there were numerous individuals present and they discussed at this time the dynamiting of the power lines again and that

on this occasion one individual stated that evidently or apparently he was sticking his neck out but that he was going to put out the lights again, meaning that he was going to stop the power. He said he was selected again for the Blue Ridge line and that on about April 22nd with the two individuals that were selected to be with him on this occasion were picked up by Felton Woodward and all of them went into North Carolina where they had previously placed some dynamite and some fuse and they carried approximately 100 sticks of dynamite and about 100 feet of fuse that entire day and all that night and the next day to the place where they had selected to blow up the power tower. He said it rained continuously those two days and that night when they placed the dynamite at each one of the legs of the power pole and had decided the fuse wouldn't burn and they had to cut it down to about 12 or 15 feet on each and leg and they lit the fuse. He said he and the other two individuals started off and had gotten only a short distance when the first charge went off and they were carrying shot guns and the other two individuals and Ed thought the law was after them or someone had been waiting on them and they fell on their stomachs and began pointing the guns in all directions and when the second charge went off they decided it was the dynamite because it threw mud and stone all over them so they got rabbit in them and got up and ran. Ed said he fell into a ditch and shortly there after the two other individuals fell in on top of him and not knowing who either of the individuals were they had a mad scramble for a few min-

utes and he was amazed no one was killed by those shot guns. He said he lost his watch on this occasion; however he went back and found it and he also asked us at this time if we hadn't used blood hounds on this particular dynamiting and when we advised him we had or the Sheriff and some other officers had he asked if they trailed them and on being informed by us the dogs did not follow the trail which was plainly visible on the sand, and that the owner got very vexed that the dogs did not take the trail, Ed told us that he had used gasoline on the soles of his feet, because he had heard that would throw them off the scent. He said he went back after this dynamiting to another individual's home in North Carolina, ate breakfast and went home.

Felton Woodward told me when he was making a statement that he knew Freed Long and also said he saw Freed Long at a meeting on or about April 18, 1940. Felton Woodward and Ed Simonds were present when Earl Hubbard made a verbal statement and they didn't deny anything that Earl Hubbard said. Earl Hubbard in substance said:

He didn't come to any of the dynamiting or participate in it until the third dynamiting, that he was present at a meeting in Isabella, Tennessee, on or about April 18th, at which time there were numerous other individuals present and at which time general discussion as to the dynamiting of the power lines was had. He said after this discussion he subsequently went with Felton Woodward in Felton's car to two other individuals' home and obtained dynamite and fuse and carried it into North

Carolina where he placed it on the property of another individual's home.

Ed Simonds and Earl Hubbard were there when Felton Woodward made a verbal statement and they didn't deny anything he said. On the contrary they pointed out various little instances he missed and discussed it freely. Felton Woodward, in substance, said:

That shortly prior to March 31, 1940, that he received word to go to an individual's home in Ducktown and that upon arriving at this home he was informed by this individual they wanted to see him, that they had decided to stop the production of the Tennessee Copper Company and they had decided the best way to do it was to dynamite the TVA power lines on the Blue Ridge and Parksville lines. He said he was instructed by this individual to make arrangements with the various other individuals who would be willing to dynamite these lines. Felton said that he, on or about March 31st, went back to this individual's home in Ducktown and again had a short discussion with him relative to the dynamiting of the lines. That he went to the home of another individual, picked him up in his car, that is Felton's car, and took him to the home of two other individuals and asked if they would be willing and they said yes, and he carried them back to Ducktown to this individual's home whom he had contacted first and there obtained some dynamite and some fuse and then went over the Rogers Ferry Bridge and let these individuals out. He stated he went on to another individual's home and asked him if he would be willing to participate in the Blue Ridge line dynamiting, that was Ed Simonds, and Ed

Simonds said he would be willing and he picked Ed up and went to the other two individuals and carried them to two other individuals' homes and obtained a brace and bit and carried Ed Simonds and the two individuals that were selected to be with him over into Georgia near McKaysville, Georgia, and let them out. He said Felton Woodward stated about a week later this individual whom he had first contacted in Ducktown told him there was a case of dynamite in Chattanooga, Tennessee, and he wanted him to come there and get it and finally as he could find no other individual to come after it, he decided or agreed to do it. That this individual whom he had talked with and told him about the dynamite in Chattanooga, told him it would be, or he would be, at the Key Hotel, and that he would contact him there in Chattanooga. Felton said he came to Chattanooga, brought his wife and baby—

Mr. Townsend: We object to that.

The Court: Yes, don't mention anybody else, except to refer to them as individuals.

He met this individual down at the Key Hotel and this individual informed him they did not have sufficient dynamite and that he should go with another individual to Bessemer, Alabama, and obtain some additional dynamite, fuse and caps. That he went with this other individual to Bessemer and purchased three cases of dynamite, approximately 500 feet of fuse and a box of caps from the Hercules Powder Company, at Bessemer, Alabama, under the name of John M. Cash; said he brought this back, dynamite, fuse and caps to Chattanooga and subsequently they transferred this dynamite

to Copperhill, Tennessee, and that some other individuals finally carried it over in to North Carolina where they stashed it, placed it at some individual's, on his premises. Felton stated that on the second dynamiting, which was on April 14th, that he contacted the other individuals who were to dynamite the Parksville line, that he also contacted Ed Simonds and two other individuals and took them into Georgia and let them out. He said he attended another meeting at Ducktown with the individual who he first called on in Ducktown and contacted him in the dynamiting, at which meeting there were several other individuals present and at which time they discussed the dynamiting at that time. That on or about April 18, 1940, he attended another meeting at Isabella, at which time there were numerous individuals present and at which time they discussed again the dynamitings and made arrangements for the dynamite and that on April 23rd he made arrangements with Ed Simonds to dynamite the Blue Ridge line and that he made arrangements with the other individuals to dynamite the Parksville line.

These men were notified as to our identity and that they didn't have to discuss the case and make a statement and whatever statement they made could be used against them in any court. I was present when the statement of Ed Simonds was reduced to writing. The paper which you hand me is the statement which Ed signed and that is his signature. He initialed it page by page. No promises of any kind were made by me to Ed Simonds or any other defendant before they made a statement and no threats of any kind whatever.

Cross Examination by Mr. Baker.

Last April, when this investigation occurred, I was in charge of the Knoxville office and Agents Roche, Mann and others were working under my supervision. Roche and Mann had been in the Basin some ten or twelve days before I got there. They made reports to me about the case from the time they arrived there, by telephone. I went in there on the night of April 24th. We had our first meeting on the morning of April 25th. In the meantime I understood the Sheriff had taken into custody or had in custody some of the defendants. I told the Sheriff I wanted to talk to these defendants. He told me they were at the YMCA building and that is the only place I ever talked to any of the defendants. I did not know that the YMCA was owned by the Tennessee Copper Company and I didn't make any inquiry to try to find out whether it was or not. I knew there were deputy sheriffs that were living there and I understood those deputy sheriffs' duties were to guard the Tennessee Copper Company. I also knew there was a strike on and understood these defendants were all strikers. As Agent in charge of the division I didn't take these men right into a building of the Tennessee Copper Company and examine them with deputy sheriffs all around them. I didn't take them there but did interview them there. I didn't take them to the New York Hotel to interview them because I didn't think it was a proper place, didn't interview them at the county jail or city jail because they were available to me at the YMCA. I didn't ask them questions about whether or not I was examining them on the Copper Company's property. I heard Fel-

ton Woodward's, Ed Simonds' and Earl Hubbard's oral statements. I read over their written statements two or three days ago and would say I have read the written statements since they were taken, about three times and once right after they were given, and once when I was before the grand jury and once a few days ago. I discussed the contents of the statements with Mr. Mann, Roche immediately after they were taken. I didn't memorize the statements. I was testifying from my independent recollection as to what was in the statements and refreshed my recollection by reading the statement a day or two ago and I remember everything I testified is correct. I first questioned Ed Simonds either the first or second day after I came to Copperhill. I questioned him a short time in the afternoon of the 25th, I believe it was on Thursday. I guess I talked to him about an hour. The next time I talked to Ed Simonds was on Saturday afternoon and think I talked to him about 15 or 20 minutes. He was still at the YMCA building and as well as I recall those are the only two occasions I talked to Ed Simonds prior to Sunday night. I talked to Felton Woodward either the first or second day after I got to Copperhill. I think it was in the afternoon and only talked to him a very short time. I may have talked to him once or twice for very short periods after that time. I also talked to him late Sunday afternoon. I talked to Earl Hubbard the first day after I got to Copperhill the 25th of April. I guess I talked to him a little over an hour, possibly on the morning of the 25th. I don't recall if I talked to him in the afternoon or night of the 25th or not. The next time I recall talking to

him was Saturday afternoon, at the YMCA building and that was about six o'clock in the afternoon as I recall. He was not lying down at the time I saw him. He told me at that time that he had a headache. I didn't know then he had had a doctor. I heard they had to send for a doctor. I left him at the YMCA shortly after six o'clock and I don't recall there was anybody with him except possibly a deputy sheriff when I left there and I don't recall if there was some other agent there examining him when I left. I believe I saw Earl Hubbard in the YMCA building Saturday morning when he was being questioned by Agent Morgan and I believe that must have been around eleven o'clock in the morning, and the best of my recollection that is the only time I recall seeing him at the YMCA on Saturday. I didn't know whether he stayed in the YMCA building from eleven o'clock in the morning until six that night on the 27th or not. I don't recall whether he smoked a cigarette or tried to smoke one or not. I didn't see him try to roll a cigarette and I don't remember of seeing him smoke while I was there. He had his glasses on when I saw him. I don't know whether he had anything to eat or not, at lunch, only what he told me. He told me he had a fine meal and it was the best meal he had had in some time and said that his food was good at all times. He didn't compliment us at that time, but later on did compliment us, he shook hands with me and told me that we agents were the finest bunch of men he had ever seen and he had tears in his eyes when he was leaving to come to Chattanooga. I didn't see him shake hands with the dep-

uty sheriffs when he got ready to leave to come to Chattanooga. He did say he had known Roxie Campbell and Pryor Crowe and Bill Rose all his life and they were fine fellows.

When we make an investigation we first let the defendant give a statement as to their alibi and as to where they were on certain dates and then we investigate those statements and if they are found not to be true we would bring up what we found and confront them with it and would come back and tell them that they hadn't told us the truth and might have told them that they had lied to us. I didn't call anybody a damn liar and I didn't hear anyone else say it. I didn't hear anybody at anytime during the course of the entire investigation use a word as strong as damn liar.

The agents had a meeting on the morning of April 25th and all the agents were present. Broughton Biggs was not present on that occasion. We never had an organization meeting when Broughton Biggs was present but we did have meetings when all the agents were present, when Broughton Biggs was present and we discussed this case at length off and on with Broughton Biggs. When we first came into the Basin he told us he suspected certain parties and told us he wanted us to examine them. We had confidential information, I wouldn't go so far as to say that we knew what the truth was, but we had our confidential information and thought it was correct. We got some of it from Freed Long.

I knew that Freed Long had told Agents Roche and Mann and Broughton Biggs that the lines were to be

blown on the morning of the 24th at 1:30. I got that information the 25th, the morning after this tower was blown up. I don't think Agents Mann and Roche had had that information prior to that time. I really don't know whether they had or not.

I know Roxie Campbell and at no time during the course of the investigation did I tell Roxie Campbell if any of these men would come clean and come down to Chattanooga, I would come to Chattanooga and recommend a parole for them. I never had such a conversation with Roxie Campbell and I didn't send Roxie Campbell to the city jail to tell some of these defendants that. I did have a conversation with Mr. Campbell on the morning the men were brought to Chattanooga in Federal custody and I told him, or rather he asked me about three men, that he would appreciate it very much if we could do anything in the world for them as they were good fellows, and I told him at the time it was the custom in pleas of guilty that the Court would ask the investigator as to the facts of the case, and it was our duty at that time to give them the facts, whether they were mitigating or aggravating, and I would do that and that is the only conversation I had with Roxie Campbell in reference to parole and that was after these statements had been taken. So far as I know Hubbard, Simonds and Woodward did not get to see their family or people while they were in custody there. Hubbard got to see his wife on Tuesday before he was brought to Chattanooga and after he had signed the statement. He didn't ask to see his wife until after he signed the statement and when he did ask, after he signed the statement

we sent him to see his wife. A lawyer never got in up there at the YMCA to see any of the defendants. The boys were kind of worried, didn't know what had happened to their friends, because no one came to see them and they wondered why someone didn't come. I didn't know why they didn't come. I didn't know that nobody couldn't get into the front door. I believe there were several people come in the building that were not deputy sheriffs or FBI. It is true there were so many deputy sheriffs up there I couldn't know whether they were all deputy sheriffs or not. I could not name a single individual that came in that was not a deputy sheriff and don't recall seeing any women in the YMCA at all. I didn't give Broughton Biggs orders that these men were not to see anybody. I didn't leave orders at the Hamilton County jail at Chattanooga after they got down here that they were not to see anybody. On the contrary I recall one of the Deputy Marshals called me up Sunday morning after they had been placed in jail and said there were several car loads of their family coming to Chattanooga and wanted to know what we wanted them to do, and I told him at that time we had nothing whatever to do with them while they were in the county jail—they would have to be regulated by the restrictions at the jail and that is all the conversation I ever had about that.

I don't know Agent O'Conner was at the jail and told the jailor not to let anybody in to see them at all and if he did give such an order it was contrary to my instructions. I told O'Conner I had nothing whatever to

do with it. The reason I told him that was because he asked me about it before I went back to Knoxville. The Marshal had asked him I think and he came to me and I told him at that time we had nothing to do with it. I didn't know there was an order outstanding at that time at the Hamilton County jail at Chattanooga that they were to see nobody, I know there was no such order from me and I made no arrangements with the Marshal or the Deputy Marshal to make any such a order. The reason I had a conversation about whether they could see anybody here was because O'Conner was the first one to mention it to me and I think the Deputy Marshal had asked him. That is all the conversation I had about it.

Re-Direct Examination by Mr. Badgett.

I was present when United States Commissioner told these men their lawyer could see them, and we raised no objection at that time. No lawyer ever approached me at Copperhill and asked to see these men and nobody else ever approached me. These deputy sheriffs were not in any way interested in the investigation or questioning of these men. I never at any time denied Earl Hubbard the right to smoke when he wanted to. As a matter of fact he smoked continuously when I interviewed him.

Re-Cross Examination by Mr. Baker.

As far as I know no lawyer came to see these men. I was present in court when Commissioner Anderson told them they could see a lawyer. That was right here in this court room, when the case was set for preliminary hearing and was on May 6th. Prior to that time they had the privilege of seeing a lawyer. So far as

I can recall I don't remember anybody connected with the Government objecting to the defendants seeing counsel on May 6th. I understood that you talked to them in the grand jury room. I didn't at that time instruct the Deputy Marshal or some FBI man to go in there while counsel was talking to the defendants and I didn't see it done. If a lawyer had come to Copperhill to see the defendants he would have had to see Sheriff Biggs, he is the man they had to see. People around the community knew where these men were, because we had been out interviewing men around in the territory. I don't know whether they knew they were being held in the YMCA, city jail, county jail or not.

Re-Re-Direct Examination by Mr. Badgett.

I had no jurisdiction whatever over these men after they were brought to the Hamilton County jail in Chattanooga.

(This witness was then excused.)

The witness, N. H. McCABE, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Norman H. McCabe, I am a Special Agent of the Federal Bureau of Investigation and have been such Special Agent for about six years. I went to Brown University in Providence, Rhode Island, and Harvard Graduate School of Business Administration.

In April, 1940, I was stationed at Charlotte, North Carolina, I was requested the latter part of April to come to Polk County, Tennessee, and Fannin County, Georgia, and assist in the investigation of dynamiting Tennessee

Power property and I did come here and assisted in that investigation.

I know the defendant Felton Woodward. I questioned him one time during the course of the investigation and that was with Agent Mann and Agent Hevron, we talked to him on the 29th day of April and reduced his statement to writing at that time. I was present when he signed the statement. He was told he didn't have to make any statement unless he wished to and he was anxious to make the statement at that time. I have examined the signature on each page of the paper you handed me and that was signed by Felton Woodward on each page of the statement. I had not talked to him previous to that. I didn't talk to Earl Hubbard or Ed Simonds. I did talk to Earl Hubbard—I talked to him about two hours, that was on Saturday the 27th but no statement was given by him at that time. I believe at the time I talked to him on the 27th he was smoking a cigarette. I never denied him or nobody in my presence denied him the right to smoke. I never had him take his glasses off and didn't tell him he couldn't have them and nobody else did in my presence.

Cross Examination by Mr. Baker.

It took quite a long time to take the statement of Felton Woodward. We started I should say about 10:30 in the morning and talked with him about 1:00 to 1:30 and we went to lunch and he had his lunch and we came back again about quarter to, maybe or 3:00 o'clock and I guess about 6:30 we finished it. It is a long statement and Agent Mann put it on the typewriter and much of

the time was consumed in transcribing it on the typewriter by Agent Mann. He typed it. In taking the statement we tried to use the language of Felton Woodward the best we could. We didn't prompt him and suggest what ought to be used in the statement. We made no statement to him whatever. At the time he gave this statement he wanted to tell all he knew about this thing and this matter and it was just a matter of putting it down on the paper. He didn't hesitate at all in telling us what to put in the statement and he was reading it just as fast as we could write it down. As I recall it there were several places where he said something and a little later would say something else and that took a little longer. His mind was perfectly clear and he had no difficulty in remembering anything that he did. I have forgotten whether it was before or after lunch that I talked to Earl Hubbard on the 27th of April. I believe Agent Morgan was there when I talked to him. When I quit talking to him and left I don't know whether Agent Morgan talked after I left or not. My recollection is we talked together and left at the same time. As far as I know no one else talked to him that day

Cross Examination by Mr. Baker.

I wouldn't say he was sick when I talked to him. He seemed to be very much worried. He didn't ask me to call a doctor or anybody else in my presence. He was sitting in a plain straight wood chair, the same kind we were sitting in. He was sitting as anybody normally sits in a chair. I don't recall that he got up out of the chair while we were examining him. I am not a member of

the bar and didn't go to law school. My home originally is in Providence, Rhode Island.

(This witness was then excused.)

The witness, E. M. HEVRON, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Earl Maxwell Hevron. I am an attorney engaged in the practice of law at Hartford, Kentucky. This last time I have been practicing since about the first of June, 1940. I have been practicing at various times since 1924. I was with the Federal Bureau of Investigation from November, 1934, until about the 1st of June, 1940. Last March, 1940, I was stationed at Chattanooga, Tennessee. I had occasion as such agent to participate in the investigation of the dynamiting of the TVA power lines in the Copperhill Basin in Polk County, and Fannin County, Georgia. I know Felton Woodward and I was present when he gave a confession. The best of my recollection it was the day the complaints were filed in Chattanooga, around the latter part of April, 29th or 30th. There were three of us, Agent Mann, McCabe and myself present when he gave the statement. We had been in the room at the time he verbally confessed and we were assigned to take his written confession or statement and we interviewed him in the downstairs room in the YMCA at Copperhill. It resulted in being a rather tedious task, it took several hours to complete it. Agent Mann wrote it out on the typewriter. We gave him all the time he wanted to make a full statement and took down what

he said. There were no promises or threats of any kind used to get him to make that statement.

I also talked to Theodore Woodward, Martin Simonds and talked to Tate Green and also L. B. Green, and helped interrogate Earl Hubbard with some others. I was not present when Earl Hubbard gave a verbal statement. I believe I questioned Earl Hubbard for about two hours. At that time Agents Roche, Mann and Plaxico were present and I believe that was the first day I was there, the 25th of April.

Cross Examination by Mr. Baker.

It was a rather tedious job getting Felton Woodward's statement. I don't know whether I could answer that he had a great deal of trouble remembering details. It took a rather long time taking the statement. He didn't hesitate, but did seem to have a lapse of memory for five minutes at a time. When I said awhile ago that he was halting in getting his statement out I meant this, he would account for some action of his, and his companions, and pass over certain events on that day, maybe go to another day and then would say there was something he left out that had a direct bearing on the previous day and we would have to go back on that. It was in the afternoon of April 25th that I talked to Earl Hubbard. I can't say the exact time but it was in the early part of the afternoon and Agents Mann, Roche and Plaxico were there when we talked to him about two hours.

(This witness was then excused.)

The witness, JOHN LUNSFORD, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is John Lunsford, I am a Special Agent of the Federal Bureau of Investigation. I was born and raised in the State of Tennessee, at Knoxville, and have been a Special Agent for six and a half years. I am a graduate of the law school of the University of Tennessee. I was present when Earl Hubbard gave a statement, a written statement but was not present when his verbal statement was given. I assisted in taking down his written statement, along with Mr. Whitten. I examined the statement you handed me and that is the statement Earl Hubbard signed.

No promises or threats were made to Earl Hubbard to get him to make that statement. He was told that he didn't have to make it and that it could be used against him in any court of law. His statement is as follows:

"Copperhill, Tennessee, April 30, 1940. I, Earl Hubbard, hereby make the following voluntary statement to J. E. Lunsford and C. A. Whitten, who have identified themselves to me as Special Agents of the Federal Bureau of Investigation, United States Department of Justice, because same is true, after having been informed that same may be used as evidence in any court of competent jurisdiction.

"I am thirty-two years of age, born in Polk County, Tennessee, October 5, 1907. I am married to Pearl Hubbard, nee Pearl Stevens. We have four children, Helen, age thirteen; Betty, age nine; Bob, age five; and Carl,

age five months. I have been employed by the Tennessee Copper Company since about September, 1936. I belong to the CIO Union, and went out on strike July 14, 1939, since which time I have not been employed. The first connection I had with any plan to destroy any of the Tennessee Valley Authority power towers was after the first two sets of explosions, the exact date being about April 18, 1940, at which time I attended a meeting which was held at the Union Hall in Isabella. There were present at this meeting besides myself, several other individuals, naming different persons at the meeting, and the aforementioned individuals are the only ones I can recall at the present time. During the above meeting there was a general discussion about CIO Union business, and he stated specifically that if they stop operations at the Tennessee Copper Company for a short time this company would come to terms with the CIO, and thereby enable the strikers to go back to work or negotiate a contract, or words to that effect. He also said there would be no investigation by the Federal Bureau of Investigation, that he had been trying to get the Federal Bureau of Investigation for eight months—"

Mr. Baker: We object to the word "he," he should say "an individual."

The Court: That is right.

The Witness: "And that the individual would be glad if they did come, or a statement substantially to this effect. There was some talk, I don't know just how it was brought in, that the Tennessee Copper Company would have to pay for any damage to the Tennessee Valley Authority if they got the power, that is, they would

have to bear the expense of repairs to lines in order to get the necessary power from the Tennessee Valley Authority. The individual brought out the fact that the destruction of the power towers before had tore out a lot of the furnaces of the Tennessee Copper Company and that if they were out again it would have the same effect. At this time another individual volunteered to destroy a tower on the upper end, that is, the Blue Ridge line, and another individual asked an individual to contact two other individuals who would take care of the Parksville line, that is, cut the power off on all the lines by the same means. I agreed to go with an individual and help him move some dynamite. An individual said that the dynamite was over in Georgia, close to Galloway.

After the foregoing conversation two individuals and I left the meeting, on Monday, April 22, 1940, in accordance with previous plans, I met this individual. I joined him on the road at Mary Mine, he picked me up in his old model Ford coach, and we proceeded to Ducktown where we parked at an individual's office. The individual went in and got an order for some gasoline, so he informed me. I did not go in. He only remained in the individual's office a very short time. However, I might mention here that prior to stopping at the individual's office the individual and I dropped by the Union Hall or a while where we engaged in general conversation with several individuals, but we did not go in. After leaving the individual's office, the individual and I went by a garage where we got some gas. We then went back to the Union Hall where we stopped and talked again. It was about nine or nine-thirty o'clock at this time, so we

came on to Copperhill where we went by the Union Hall, we stayed there until about eleven A. M., then drove out the Blue Ridge Highway to a point where you turn to the left by some church, the name of which I do not know. I might mention here that we carried an individual home, and an individual also went with us. We picked up an individual at Barnes Chapel where he was cutting wood, with two other individuals. An individual got in the car, three individuals, and we drove down the creek where we parked and went up the hill and got dynamite and fuse out of an old hollow stump, and individual and myself went after the dynamite, as this individual knew where it was hid. We put the dynamite and fuse in the car and drove over by Carter's Switch, where I went to see Walter Bell about renting some ground—"

The Court: That should be an individual; not the Walter Bell concerned in this case.

A. "From there we went to an individual's house where we left the dynamite in his garage, in the lower part, and drove the car into the garage, where the dynamite was unloaded by an individual and I. It was my understanding the above mentioned dynamite was to be used by two individuals in dynamiting the third explosion on the Blue Ridge line. These were the only two men I knew were to be connected with this particular matter. The above is all the information at my disposal concerning the third dynamiting on the Blue Ridge line, and it covers my connection with this matter.

I have read the foregoing statement consisting of approximately one and one-half pages, and the same is true.

No promises or threats have been made to or against me in order to influence me to sign this statement, or to make this.

(Signed) Earl Hubbard.

Witnessed: J. E. Lunsford, C. A. Whitten, Special Agents, Federal Bureau of Investigation, United States Department of Justice."

Earl Hubbard in the statement mentions Freed Long and said he was present in the Hall in Isabella when he named persons present, a number of individuals, one of the individuals was Freed Long. That was at a meeting on April 18th, 1940, at Isabella, Tennessee. I file this statement as Exhibit 1 to my testimony.

Cross Examination by Mr. Baker.

I first talked to Earl Hubbard on the evening of April 26th, at the YMCA building in Copperhill. I talked to him that night for an hour or two hours. I would say rather between 7:30 and 9:30 I talked to him. I don't recall whether I talked to him on Saturday the 27th of April or not. I may have passed him, or seen him or spoke to him. I don't seem to have had an interview with him. I don't know whether he was around the YMCA building all day on the 27th or not. I don't remember seeing him there. Agent Whitten was present when this statement was taken.

(This witness was then excused.)

The witness, C. A. WHITTEN, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is C. A. Whitten, I am an Agent for the Federal Bureau of Investigation and have been with the Bureau for about fourteen years. Before that time I was with the United States Custom Service.

During the latter part of March and early April, 1940, I was stationed at Birmingham, Alabama, and came to Polk County and Fannin County, Georgia, to assist in investigation of the dynamiting of the Tennessee Valley Authority power poles. I witnessed a statement made by Earl Hubbard. He was notified the statement would have to be voluntary, that he didn't have to make it and it could be used in any competent court, in a court of competent jurisdiction against him. The paper you have just passed me is the statement we took from Earl Hubbard and is witnessed by me. No threats were made toward Earl Hubbard to get him to make the statements and no promises made. It was voluntary so far as I could tell. I didn't deprive him of his glasses and the best I remember he had his glasses on. I didn't deny him a cigarette and no other person did to my knowledge. I think he smoked quite a lot. I can't state definitely what kind he smoked but I think he made his own cigarettes.

Cross Examination by Mr. Baker.

I first talked to Earl Hubbard on the evening of April 26th in company with Agent Lunsford. I would say I talked with him between one and two hours. I can't make a definite statement about the time of night I

talked to him, it was up towards nine or ten o'clock. I left him at the YMCA building when I finished talking to him. The next time I talked to him with a purpose of obtaining any information regarding this case was on April 30th. To my memory I didn't talk to him on the 27th of April at all.

(This witness was then excused.)

The witness, C. H. JONES, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Charles H. Jones and I operate a Gulf Service Station at 10th and Broad Streets, Chattanooga, Tennessee, and have been operating this station about seven years and was operating it on April 9, 1940. I was there personally on April 9th. The station I run honors Gulf credit cards and was so honoring cards on April 9, 1940. I know M. C. Anderson and have known him four or five years. He buys gasoline and oil at the filling station and has a credit card.

The paper which you have just passed me and which has been described as Exhibit No. 1 to the testimony of W. J. Hugo is an invoice for the sale on a Gulf service card to M. C. Anderson on April 9, 1940. In order to buy gasoline on a credit card it is necessary that the invoice be signed. I can't say whether that is M. C. Anderson's signature or not but that is where they have to sign to get the gas. I believe that is his credit card number, I wouldn't be positive but think it is. I got my money on that particular purchase. 12.9 gallons of gasoline and one quart of oil were purchased, making a total of $3.34, and

the number of the credit card is 8-A-5436. There is no way to tell what particular employee sold the gasoline. My signature is at the bottom of the card but that does not necessarily mean I made the delivery, but I did sign the card and sent it to the Gulf Refining Company and got my money. I believe it is made out in my handwriting. I do not know Van D. Jones.

Cross Examination by Mr. Baker.

I have sold M. C. Anderson large quantities of gasoline in the last six months or a year and still sell him large quantities. He bought gasoline from me all during the months of January, February, March and April, 1940. He always bought a full tank full, and also bought his oil from me.

(This witness was then excused.)

The witness, I. A. CALDWELLL, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is I. A. Caldwell. I am not doing anything at present but back in the last of March or first of April, 1940, I was running the Key Hotel at Chattanooga, Tennessee. I turned over certain records to the Federal Bureau of Investigation and those were records of people who had stopped at the Hotel. The records which you have passed to me are the records I turned over to the Federal Bureau of Investigation.

Van D. Jones of Bessemer, Alabama, checked in the Hotel on the 5th month and 8th day, and checked out on the 9th. He spent one night in the Hotel; and was in 1940. That would be the 9th day of May, 1940. This

card you have passed to me shows M. C. Anderson and wife, Ducktown, checked in the fourth month and fourteenth day and checked out on the 17th, which would be in April, and they checked out on April 17. I refer to the year 1940.

The card you have just passed me is card of Van D. Jones, Bessemer, Alabama, who checked in on the 4th month and 13th day and checked out on the 17th, 1940.

The card you have just passed me is for M. C. Anderson and wife, Ducktown, Tennessee, who checked in on the 4th month and 8th day and checked out the 4th month and 9th day, checked in on April 8th, 1940, and checked out April 9, 1940.

The card you have just passed me is one for M. C. Anderson and wife, Ducktown, Tennessee, and shows they checked into the Hotel April 5, 1940, and checked out April 6th.

The card you have just passed to me is M. C. Anderson and wife, Ducktown, Tennessee, and shows they checked in the Hotel on April 4th and checked out April 5th.

The card you have just passed me is M. C. Anderson and wife and shows they checked in the Hotel on April 3rd and out on April 4th.

The card which you have just passed me is for M. C. Anderson and wife, M. C. Anderson and party, Ducktown, Tennessee, and shows that the party occupied two connecting rooms, 715-716 and checked in to the Hotel on April 22, 1940, and checked out April 23, 1940, and both of these rooms were in Anderson's bill.

The card you just passed me is for M. L. Ellis, Ducktown, Tennessee, and shows he checked in the Hotel on April 14, 1940, and checked out April 17, 1940. There is no way I can tell who paid the bill.

The card you just passed me is for C. J. Waldin, Ducktown, Tennessee, and shows he checked in April 14th and checked out April 17th.

The card you have just passed me is for Van D. Jones, Bessemer, Alabama, checked in the Hotel, April 15th, and checked out April 19th.

I will file all those cards as Exhibit No. 1 to my testimony.

Cross Examination by Mr. Baker.

I didn't know M. C. Anderson personally but my records show he stopped at the Key Hotel practically every week for some two or three years. I think Van D. Jones had been stopping there for sometime but I am not positive about it.

The witness, HARRY C. PHELPS, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Harry C. Phelps and I work for the Hercules Powder Company at Bessemer, Alabama, and have been working for them since 1937. I was working for the Hercules Powder Company on or about April 9, 1940. My job is shipping clerk. I remember making a sale of dynamite, fuse and blasting caps to John M. Cash on April 9, 1940. The paper which you have handed me is our delivery ticket. It shows the customer, the customer's address, the date and the items and the amount of

each item and the total. John M. Cash, on that date brought three cases of 60% Extra LF, 1-1/4 x 8, 150#, 500 feet Orange Wax Clover Fuse, 100 No. 6 blasting caps. The first item is three cases of dynamite, also 500 feet of fuse and that fuse was Orange Wax Fuse, Clover Brand. He also bought one box of blasting caps and signed the invoice John M. Cash. I saw him sign it. That was a cash transaction and it came to $21.35, and sales tax of 43 cents, making a total of $21.78. I personally made up this ticket. I file the ticket as Exhibit No. 1 to my testimony. The details of the transaction are these. It was somewhere between 3:30 and 4:30 in the afternoon, approximately four o'clock I would say that he came and said he wanted to buy, and I sat down by the typewriter and typed it out and had my assistant go down to the magazine in the small truck to get the dynamite. My assistant was Albert Parsons. The purchaser gave his address and I told him if he needed anything in the future to call me up and he said he lived in Bessemer and could very well do that. I told him we would rather deliver the stuff and would let customers have the first delivery there but in the future we would like to deliver it to the job. A cash sale is out of the ordinary at the plant. I would say in proportion to our delivery sales we would probably have one cash sale out of 100. We didn't have any other cash sale on that day. I think I can identify the man who bought this stuff from us.

(Thereupon the witness left the witness stand and walked down among the defendants and placed his hand on one of them.)

This is the man who represented himself as John M. Cash and signed the name John M. Cash and got the dynamite, fuse and caps. I have found out afterwards who the man who bought the stuff from me and signed John M. Cash was and his real name is Felton Woodward and that is the man I have pointed out here in the court room.

Cross Examination by Mr. Baker.

My office at the Hercules Powder Company is located at what is known as McLemore Junction just South of Bessemer. It is not at the main office of the plant, it is a little office off from the magazine and it is about 200 feet or 300 yards from this office to the magazine, maybe more. I didn't ask the man what he wanted with the powder but sold it to him in the ordinary course of business and made up this ticket myself. This ticket shows that the powder was delivered by truck No. 9, but that was put on the next day when we made up the truck reports we put that in, one of the trucks, I don't know which one, went to the magazine and got the powder but the caps and fuse were in the proximity of my office and it was not necessary to send them for them in a truck. The figures 75 on the ticket which I have are some figures put on by the Birmingham office, some kind of code in their books. The handwriting on there is the salesman's name, I put that on there, or rather I didn't put that on there. The typewriting is the only thing I placed on this ticket and also the figures 8 and 9 and the figure one in parentheses. While the ticket shows that the stuff was billed for on April 12th

the delivery was actually made on April 9th and this ticket and another one in the home office in Wilmington, Delaware, from Birmingham, was invoiced by them on April 12, April 12th was placed on the invoice by the Birmingham office. John M. Cash was in my office probably ten or fifteen minutes and I was busy making out the ticket most of the time and had my back to him part of the time. As I recall he had on a dark suit, I don't know about the vest, but he had on coat and trousers. I can't say what color the suit was other than dark. I believe he had on a hat, but I don't know positively and I think he had on a coat. He didn't have on an overcoat. I can't say whether he had on a tie or not. If he had on a hat I don't know what color it was and as I said before I can't say what color suit he had on, whether brown, blue or what. I didn't notice what kind of shoes he had on. I didn't see him come in the place. I might have noticed the car he came up in as he drove his car up to the office. I did see the car he was in. The car was either a Ford, Plymouth or Chevrolet, about a 1936 model, I can't say definitely. I lean toward Chevrolet but I can't say. I don't know whether it was a four or two-door car but I am sure it wasn't a coupe. I don't know where the powder was placed in the car, I didn't see the powder put in the car because I was in the office still talking to him. Albert brought it up. I can't say how far he parked from the office but I imagine approximately 20 to 60 feet away. The driveway comes around to the office. I kind of believe he parked at the office, there is a turn around there

and he had to turn around and I talked to him after he turned around while it was in the car. That is when I told him about the future deliveries. I got to Chattanooga about 5:15 yesterday afternoon. I had talked to Mr. Frazier and Mr. Badgett and Mr. Whitten awhile this morning. I didn't talk to Mr. Roche but did talk to Mr. Whitten in the Agents' room here in the court house. I was out in the hallway this morning to get some water and go to the rest room. I was not here last week. There were a few words passed between Mr. Frazier and Mr. Badgett and Mr. Ault and I this morning, probably in Mr. Frazier's office, and in the FBI room. I talked to Mr. Whitten probably three or four or five minutes and there were some other people on the other side of the room. There was nothing particular about John M. Cash's features that attracted my attention when he bought the powder. I don't remember his nose and didn't remember it until I saw him again. It didn't register with me as to him. We don't sell powder that way any more, we are more careful now, we ask questions as to who they are, but at that time we didn't ask any questions, we just went on and sold the powder. We sell the Tennessee Copper Company dynamite in carload lots.

Re-Direct Examination by Mr. Badgett.

No person has ever pointed out anyone to me and told me that was John M. Cash. The only reason I went in the District Attorney's office this morning was to get my witness card punched. I didn't talk to Mr. Pratt who is a Government man, about John M. Cash. I

talked to him about another thing. I identified John M. Cash on the preliminary hearing.

(This witness was then excused.)

The witness, ALBERT PARSONS, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Albert Parsons. I am Assistant Magazine Keeper for the Hercules Powder Company in Bessemer, Alabama, and have been so employed for fifteen years and was employed in that capacity on the 9th of April, 1940. I remember the purchase being made by a man giving the name of John M. Cash, he bought two cases of dynamite, 300 feet of fuse and 100 blasting caps. I didn't make the sale, but did deliver it to him from the magazine. Mr. Phelps, the shipping clerk, made the sale and he is the man who just testified here. I came in the office and he asked me to get this stuff for Mr. Cash and I believe he gave me a copy of the delivery ticket and I took that and went to the magazine and got the powder in a truck and came back and walked up and got him the fuse and caps. I identify the sales ticket which you have just handed me and it is the ticket for the sale made on that date and gives the total purchase and that is what I delivered to this man Cash. He had a car with him and I put it in his car, put it in the trunk, that is I put the powder in the trunk and handed him the caps and fuse. I think I can identify the man.

(Witness then came down from the witness chair and walked over among the defendants and placed his hand on the shoulder of one of the defendants.)

This one here is the man. This is the first time I have seen him since he bought the powder.

Cross examination waived.

(This witness was then excused.)

The witness, JOHN A. ROCHE, being re-called on behalf of the Government, testified as follows:

Examination by Mr. Badgett.

I saw the man that Mr. Parsons pointed out a minute ago and I know him, his name is Theodore, Sweat, Woodward, and he is the one on the left.

I also know the man that Phelps pointed out and he is Felton Woodward, and Felton Woodward and Theodore, Sweat, Woodward, are brothers.

(This witness was then excused.)

The Court: Gentlemen, I want to make this inquiry. Is there any method by which we can save time and not have to go over all the ground apparently we went over before and then have to go over it again?

Mr. Baker: I suggested this to General Frazier, that some way be worked out whereby we can preserve our exception to the introduction of the statements and let them go before the jury to begin with.

The Court: Let's see how that could be. I thought it might be agreed that the proof as to the admissibility of these statements would be substantially the same as the proof was as to the other statements.

Mr. Baker: It will be along the same general lines.

The Court: If that could be done or we might do this, go ahead with them—

Mr. Frazier: I don't see why that suggestion wouldn't be all right. We have to go over the same ground before the jury, anyhow. Let Mr. Baker enter his exception and renew his exceptions before the jury.

Mr. Baker: What I want was that the exception be saved and at the time these defendants are ready to testify before the jury, whenever it is, that be considered as being put in the record so as to preserve our exception.

The Court: That can be done. It is my understanding that all this evidence is being treated as before the Court on the admissibility, as well as before the jury on the credibility and there being the same ruling and exception, that is unless something develops further that I can't see and have to change that ruling.

Mr. Baker: Of course, we are not waiving anything.

The Court: It is only to expedite the case. I understand that. There is nothing being waived at all.

Let the jury come in.

(The Jury then returned to the jury box.)

The witness, R. T. MANN, having been first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is R. T. Mann. I have previously testified in this case. During the course of this investigation in Fannin County, Georgia, and Polk County, Tennessee, I had occasion to question the defendant John David Queen. I questioned him on the night of the 29th of April, and on Monday the 30th of April. On the 30th of April he gave me a statement. Before he signed his statement he was told by Mr. McCabe and I that he didn't have to

make any statement and if he did it could be used against him. He wanted to make a statement, he volunteered the information. The paper you have just handed me is a statement which he signed and give it to me in the presence of Agent McCabe and Agent Hevron. His signature is on each page of it. No threats or promises were made to him at all.

At this point counsel for the defense entered an exception to the introduction and reading of the statement, which was overruled by the Court.

The statement is as follows:

"I, John David Queen, make the following voluntary statement to R. T. Mann and E. M. Hevron and N. H. McCabe, and they have advised me that they are special agents of the Bureau of Investigation, and that what I say may be used against me in any court.

I am 32 years of age, I am married and have four children, ranging from 2 to 10 years of age. I have lived in Copperhill, Tennessee, for the past ten years and have worked in the Tennessee Copper Company's acid plant here in Copperhill for the past twelve years. On July 13, 1939, I went out on strike and have not worked since. About a week before a tower of the Tennessee Valley Authority was first blown, some of the boys in the plan to do this, I would not be positive who told me this. but it was some of the strikers on the night the first tower was blown up I was on the picket line near the Louisville and Nashville passenger depot in Copperhill, when an individual came by to see me. It was between 9 P. M. and 10 P. M. on Sunday, March 31, 1940. This individual

asked me if I wanted to help do a little dirty work and I told him if it would help us along any I would be willing to do it. The individual told me to get in this individual's car and I did get in this individual's car and found another individual and another individual in this individual's car with this individual. We went from Copperhill to a place called Sugar Creek and went down to an individual's home and borrowed a two inch auger. Another individual didn't drive us to this individual's home in this individual's car. We got out of this individual's car about a mile from this other individual's home and another individual and myself walked down to another individual's for the auger. This individual with me called another individual to the door and told him we wanted the auger. This individual went back in the house and got it for us and this individual with me told the other individual if any one inquired about us coming to his place so late at night to tell them we were looking for a dog we lost. We left this place and went back to the car where two individuals were waiting for us and we drove to the top of the hill at Bakerstown, and three other individuals and myself took the dynamite, fuse and caps and walked through the woods an hour before we found a power line. We were not far from the road and we selected the first wooden poles we came to. We bored holes in each of the two poles supporting the power lines and placed the dynamite in the holes. One individual handled the dynamite as he was experienced. This individual attached the fuse and lit it and we headed off toward the railroad bridge across the Toccoa River. We had a lot of fuse and we were almost home before I

heard the blast go off. I went to my house and went to bed. While we were up there boring holes in the poles I heard the blast in the other side go off and one individual said "Hell, they have done fired on the other end and we are behind." We hurried and got finished as soon as possible. After we heard our shots go off we saw a blue light in the direction of the poles we had blasted, and one individual said they are burned down now, meaning the wires had gotten together and had burned off. A week ago to-day I was at Turtletown cutting wood and a certain individual sent word for me to see him when I got home at his house. I went to this individual's house about six o'clock last Monday evening, but he was not there. I found him at another individual's house and we went back to the other individual's house. This individual told me it was planned to blow some towers the next night. We left this individual's house and walked to another individual's house in North Carolina, about eight miles. We got there about nine or ten P. M. His wife was in bed. We stayed there an hour or an hour and a half, and we went to this individual's garage and three individuals went in the garage for the powder, and we divided it about one half, each half being placed in a sack, with fuse and caps, and the fuse was placed in a canvas hunting jacket to keep it dry. One individual carried the caps in his pocket. One individual made some hot coffee before we left; then we took off. When we left this individual's house it was sprinkling a little, and we walked to the power line and we went along it and down the hillside. We laid down and rested. We laid out in the woods all that night and the next day,

it rained hard and we got wet. Tuesday night, April 23, 1940. We set the charges of powder around the four legs of a steel tower. Lit the fuse and run. We had a short fuse. We started running as soon as the fuse was lit, and we were not really a safe distance when the first shot went off. We then came to an individual's house after the shots went off. We ran until I gave out. The other individuals built a fire and I laid down by it and went to sleep and the rest of them went on. About nine o'clock the next morning two individuals came back for me and gave me something to eat, and I brought them in to town. One individual stayed out in the woods by himself but came in later that day. I got home about noon on Sunday, April 24th. I did not take part in the dynamiting on April 18th. I do not know anything about that except what people told me around town.

I have heard this statement read to me and it is the truth to the best of my belief and knowledge. I am sorry this happened and it was because we were green and misled and didn't know about labor troubles.

I have signed each page of this, with my signature below.

John David Queen.

Witnesses:

R T. Mann
E. M. Hevron
N. H. McCabe,
Special Agents, Federal Bureau of Investigation."

The statement was then filed as an Exhibit to the testimony of this witness and will be copied into the record as read.

Cross Examination by Mr. Baker.

I took this statement from Mr. Queen on the night of Monday, April 29th, at the YMCA building in Copperhill. I don't know when David Queen was taken into custody. That is this is the only time I talked to him, on the night of April 29th, and I don't know how long he had been in custody. No other person was present when he made this statement except Agents Hevron, McCabe and Queen and I and it was about nine o'clock when we took the statement. About nine o'clock when we started taking the statement and it took about an hour to take the statement and I would say it was about ten o'clock when we finished. Mr. McCabe took the statement himself and I was present. He did most of the questioning and I was present during all of it and the statement is in Mr. McCabe's handwriting.

(This witness was then excused.)

The witness, E. M. HEVRON, having been duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

I have testified before in this case and I was present when John David Queen's statement was taken. He was told that he didn't have to give a statement and if he did give one it could be used against him in court. I was present all the time when the statement was being taken and he was not promised anything in consideration of making the statement and no threats were made at all. He impressed me as being very sincere and told us very frankly he realized he had been misled and he wanted to do what was right and tell the truth. Mr. McCabe wrote

the statement down in his handwriting and Agent Mann and I were there. Queen read the statement over and said it was the truth and signed each page of it. I have examined the paper which you have handed me and the paper is the statement David Queen signed, signed each page of it.

Cross examination waived.

(This witness was then excused.)

The witness, N. H. McCABE, having been duly sworn, testified as follows:

Direct Examination by Mr. Badgett:

I was present when John David Queen gave a statement. I wrote the statement down as he told it to me. I don't remember whether he read it or whether he asked me to read it to him, but he either read it himself or I read it to him and he signed each page of it. The paper which you have just handed me is the statement which he gave to us, and John David Queen's signature is on each page of it. Mr. Queen was told that he didn't have to make a statement unless he wanted to and he wanted to make the statement. He told me he was anxious to give a statement, that he thought he had been misled. I didn't offer him anything in consideration of his making any statement, or any promises of any kind and didn't threaten him in any way.

Cross examination waived.

(This witness was then excused.)

Q. At the time you talked to him did you or not, or did you hear any agent in your presence, deny to Ed Simonds a lawyer? A. No, sir.

Q. Did he make a request for an attorney? A. I don't recall it, but he never denied one, never was denied one.

Q. Did you or not, or any other agent, tell him "you got awful damn smart since you spent one night in jail"? A. No, sir.

Q. Did you ever strike one of these men? A. No, sir.

Q. Did you lay your hand on them? A. No, sir.

Q. Did you intimidate them in any way? A. No, sir.

Q. Did you make any promises to any of them? A. No, sir.

Q. Did you or not, or any other agent in your presence, tell Ed Simonds that you had influence with the District Judge, and if he would make a signed confession or statement telling of his implication in the crime, you would come down and see that he got time off, or got a parole? A. No, sir.

Q. Did you, or any other agent in your presence, ever tell him if he would make a signed confession or statement implicating himself you would get his bond cut to probably $1,000? A. No, sir.

Q. Were you ever present when Felton Woodward was questioned? A. Yes, sir.

Q. How many occasions; when was the first occasion? A. It was shortly after I talked to Ed Simonds.

Q. How long did you talk to him then, and who was present? A. I recall there several agents were present, I don't recall the names of them. We had seven or eight there at that time, we would change about.

Q. How long did you talk to him? A. I didn't talk very long to Woodward, I wouldn't say, possibly ten or fifteen minutes the first time.

Q. How long the second time? A. Probably a little longer than that, but not much longer.

Q. Who was present on the second occasion? A. I believe Mr. Plaxico, I am not sure.

Q. Anyone else? A. I don't recall, maybe Mr. Roche, I don't know for sure.

Q. Did you talk to him on any other occasion? A. No, sir.

Q. Were you present when he made a verbal confession? A. No, sir.

Q. You had gone to Detroit, Michigan, on another case? A. Yes, sir.

Q. At any time when you talked to Woodward, did you or any of the others call him a God damned liar, or anything of that nature? A. No, sir.

Q. Did you hear anyone do that? A. No, sir.

Q. Did you hear anyone call him a liar? A. I did not hear it.

Q. Did you call him any such name as that? A. No, sir.

Q. Did you say, or did you hear any other agent say "we came down here to break the strike and stop possible killings, we are primarily down here after M. C. Ander-

son"? A. We tried to impress upon them that we were not interested in the strike.

Q. Did you say that or not? A. Absolutely not, no sir.

Q. Did you or not tell Felton Woodward, did you use this language "we have a place in Atlanta where you can be made to talk"? A. No, sir.

Q. Did you hear any agent make such statement? A. No, sir, not in my presence.

Q. Any statement of that nature? A. No, sir.

Q. Did you hear any other agent make any promises to Felton Woodward? A. No, sir.

Q. At any time? A. No, sir.

Cross Examination by Mr. Baker.

X. Mr. Morgan, you got into the Copper Basin on the 26th? A. Around four A. M. April 26th.

X. Where did you go when you got there? A. We went to the hotel, the New York Hotel.

X. You came in with another agent? A. That is right.

X. Who was that? A. Mr. McCabe.

X. Did you have a meeting the next morning? A. No, sir.

X. You didn't have a meeting with Mr. Plaxico to get instructions as to what you were to do? A. We had been driving all night. That afternoon we discussed the case with Mr. Plaxico and several agents who had been working on it.

X. Was Mr. Plaxico with you when you came in? A. No, sir.

X. You did discuss the case with him the next morning? A. Yes, sir.

X. How many agents were up there on this investigation? A. Mr. Lunsford, Mr. Plaxico, Mr. Roche, Mr. Hevron, Mr. Whitten, Mr. McCabe, in addition to myself. There may have been one more, I don't recall.

X. You don't recall whether there was another or not? A. Possibly there may have been.

X. You got there on the 26th, on what day did you say you first talked to Earl Hubbard? A. I talked to him, I think, around 5:00 o'clock on April 26th, the first time.

X. Where was he? A. At the YMCA building.

X. You were alone on that occasion? A. Mr. McCabe was with me.

X. How long did you talk to him? A. I would say a period—well, I am not sure, it was intermittent, fifteen or twenty minutes or half an hour, to maybe an hour. I would see him and talk to him and then come back.

X. You would talk to him probably ten or fifteen minutes, go off and come back and talk to him again? A. Yes, sir, at times I would.

X. How late did you talk to him on the 26th? A. I didn't spend more than an hour and a half all told, from 5:00 o'clock—I don't know whether 5:00 o'clock to 6:30 o'clock or not, but around that time, because Mr. McCabe and I went out and talked to Simonds.

X. To Martin Simonds? A. That is right.

X. You went into North Carolina? A. I understand so, yes, sir.

X. You left Earl Hubbard at the YMCA building? A. Yes, sir.

X. You again talked to Earl Hubbard the next morning, the 27th? A. I talked to him the next day, I don't remember whether in the morning.

X. On Saturday? A. Yes, sir.

X. What time of the day did you start talking to him? A. Around two, it was in the morning, I believe.

X. Where was he? In the YMCA.

X. How long did you talk to him, Mr. Morgan? A. Probably ten or fifteen minutes, or more, around that time. It is difficult to judge the exact time.

X. Did you go away and leave him then? A. Yes, sir.

X. Did you come back and talk to him again? After that? A. Oh, yes.

X. How many different times did you talk to Earl Hubbard on the 27th? A. That is difficult to say. I may have talked to him two or three times. We talked to so many people it is difficult to say.

X. You talked to him off and on all day? A. Intermittently, I would say, yes.

X. The last time was late in the afternoon, was it not? A. I believe so.

X. He wanted a doctor, you had called a doctor for him? I called no doctor, there was no doctor called in my presence.

X. He told you he was sick? A. He said he had a headache.

X. He told you he wanted a doctor? A. No, sir. In fact we insisted upon him having a doctor, and he said he would feel all right and I got an aspirin.

X. He complained all the afternoon of being sick? A. No, sir, he said he had a headache, was feeling bad.

X. You talked to him off and on all morning and afternoon? A. At intervals, yes, sir. He rested most of the time.

X. You say he rested, you were not there, how do you know? A. He rested at times while I talked to him, sit back in his chair.

X. Lean back in his chair? A. Yes, sir.

X. That was a straight chair? A. I don't recall.

X. He did not have his glasses on? A. I don't recall that.

X. You don't recall whether he smoked any cigarettes? A. I noticed he was rolling cigarettes.

X. Did he ever get one rolled? A. Most of the time he was so nervous he would drop it.

X. You didn't observe him smoking all day on the 27th of April, did you? A. I wouldn't be able to say. I think I do recall his smoking.

X. You did see him start to roll cigarettes many times, but never got one rolled? A. I wouldn't say that, no, sir.

X. You saw him drop most of them? A. I saw him drop some of them.

X. While talking to him on the 27th, who was with you? A. I don't recall whether McCabe was with me on that occasion or not.

X. Do you know whether or not other agents were questioning him when you would go out a while, do you know whether some other agent came in and questioned him? A. I don't know that.

X. You couldn't answer that? A. No, sir.

X. When you would go away for a period of time during the 27th, when you came back did you ever find another agent in the room with him? A. I don't recall whether agents or deputy sheriffs.

X. You wouldn't say whether somebody was in the room with him or not? A. No, sir.

X. I believe you said you asked him if he wanted food, and he told you he was not hungry? A. That is right.

X. When was that? A. On one occasion, I don't know whether on the 26th or 27th.

X. Was he your prisoner? A. No, sir.

X. Whose prisoner was he? A. I understood he was Sheriff Biggs's prisoner, a state prisoner.

X. It was not your obligation to feed him? A. No, sir, but we do that on many occasions.

X. You usually feed your suspects; did you ever go to the city jail? A. Yes, sir.

X. When did you go there? A. I think it was on the afternoon of the 27th.

X. Who went with you? A. I don't recall who went with me. I talked to one prisoner.

X. Which one? A. Ed Simonds.

X. I will ask you if you didn't go with Roxie Campbell? A. He may have been with me, I don't know.

X. You wouldn't say whether he was with you or not? A. No, sir.

X. You had a conversation with Ed Simonds at the city jail? A. Yes, sir.

X. Did the man with you, if there was one with you, talk to him also? A. He may have after I got through, I don't recall.

X. You told Ed Simonds in that conversation at the city jail that you had the goods on him, didn't you? A. I didn't tell him that. I told him I was familiar with the case.

X. And he had better tell you about it? A. No, sir, we asked him to tell the truth about it.

X. You told him if he didn't make a statement he would get thirty-five years in the penitentiary? A. No, sir; he was told he did not have to make a statement at any time.

X. He was always told that? A. He was told that by me.

X. Did you talk to anybody else there? A. I think I spoke a few words to Sweat Woodward.

X. You and Roxie Campbell, while at the city jail, talked to Ed Simonds at the jail? A. Yes, sir.

X. You took him over to the county jail? A. The YMCA, is that right?

X. No, the county jail? A. I didn't take him to any county jail, only talked to him at one jail, one place, and then at the YMCA.

X. You did take him back from the city jail to the YMCA? A. I am not sure whether Mr. Campbell did or not, I believe it was.

X. A deputy sheriff, anyway? A. Yes, sir.

X. What date was that? A. I think April 27th.

X. You talked to Simonds before that time? A. No, sir, that was the first time I talked to him.

X. What time of night was that? A. That was in the afternoon.

X. How many people were in the cell at the city jail? A. I don't recall, several people there.

X. Five or six in that one cell? A. There may have been, I didn't count them.

X. You did look in there? A. Yes, sir; several there.

X. Did you look to see if there was any place for them to sleep? A. I didn't notice that.

X. You didn't notice whether there was or not? A. No, sir.

X. There was hardly room for five or six in there to stand up or sit down, is that true? A. I wouldn't say that, I didn't examine it.

X. It was not more than seven feet square? A. That was the only occasion I was there. I don't recall.

X. They were crowded inside that cell? A. I couldn't say.

X. Could you say they were not? A. No, I couldn't say they were not.

X. You couldn't say how many were there? A. No, sir.

X. You couldn't say whether there was any place for them to sleep? A. No, sir.

X. After you got Ed Simonds back to the YMCA, how long did you talk to him there? A. I don't recall, a number of minutes, ten or fifteen or more minutes.

X. You left him at the YMCA? A. I think he was left there that night, I am not sure.

X. Did you talk to him again? A. I don't believe so, I left the next morning.

X. That was the evening of the 27th? A. Yes, sir.

X. After your got him to the YMCA and talked to him there, did you later that evening talk to him? A. I may have, I don't recall that.

X. You wouldn't say whether you did or not? A. No.

X. What was the latest at night you ever talked to one of these men? A. I would not say past 8:00 o'clock.

X. Who did you talk to at 8:00 o'clock? A. I wouldn't say it was 8:00 o'clock, I know it was not past 8:00 o'clock. I think Simonds and Hubbard, the last two I talked to, they wanted to sleep together that night to discuss the case, and talk it over.

X. When did you first talk to Felton Woodward? A. I talked to him on the 27th.

X. You didn't talk to him before the 27th? A. I don't recall it.

X. You don't recall whether you did or not; on the 27th you were working alone all day, were you not? A. No, sir.

X. Who were you working with? A. I talked to Ed Simonds alone, but we worked together most of the time, possibly Mr. Roche, Mr. Plaxico, or one of the other agents there.

X. You talked to Earl Hubbard alone the first time, on the 27th? A. No, sir; Mr. McCabe was with me, that was on the 26th, I believe.

X. You talked to Earl Hubbard alone at any time? A. I don't recall talking to him alone.

X. Now, when these men denied, when you first started talking to them, they denied they were guilty of anything, did they not? A. I beg your pardon?

X. These men all told you when you first talked to them they were not guilty? A. Not exactly. They first said not guilty, and I told them they did not have to discuss the case if they didn't want to. At times they told me they didn't care to discuss it.

X. When you questioned them, they would always tell you they were not guilty? A. No, sir.

X. Until right at the last? A. On the night of the 27th they told me they would like to get together and talk it over, that if one would talk the others would talk.

X. When you would ask them that question, and when they would answer it, I will ask you if you wouldn't tell him you knew that was not true? A. I probably did, yes, sir.

X. You told him you knew what the truth was? A. I told them what I thought it was.

X. You told him you thought you knew what the truth was? A. Yes, sir.

X. And if they didn't answer any question in that way, which did not comply with what you knew the truth to be, you would tell him that was not the truth? A. I may have told them that. I told him I would rather

not hear it that way, told him to tell nothing but the truth.

X. You knew it was not the truth, what he told you? A. I had good reasons to believe it was not true.

X. The various agents had discussed the matter between themselves for several days and had all details of what they thought the truth was? A. Not exactly.

X. Substantially? A. Substantially, yes.

X. When you talked to any defendant and he told you what disagreed with what you thought the truth was, you would tell him, in substance, that he was lying? A. Substantially that, yes, sir.

X. That you would rather not hear anything more along that line? A. Not exactly that way.

X. In what way? A. I would tell them, I talked to Ed Simonds and Earl Hubbard, I made it very plain that we didn't expect them to tell a lie, rather have them tell the truth, that they didn't have to make any statement, and they took advantage of that.

X. Did you tell any of them you would do anything to them if they lied to you? A. No, sir.

X. Or if they didn't tell you the truth? A. No, sir.

Re-Direct Examination by Mr. Badgett.

RQ. Were there other agents there besides those you have named? A. I don't recall any others.

RQ. You mentioned that Ed Simonds and Earl Hubbard wanted to stay together one night, what was that for? A. Earl Hubbard told me that he would rather not say anything about the case until he talked to Ed

Simonds, and if Ed Simonds would talk that he would talk.

RQ. That they wanted to stay together? A. That is right.

RQ. Later did he give a statement? A. I understand he did, I was not present.

RQ. You did not take any of these men back and forth from the jail to the YMCA? A. Only on one occasion when I was accompanied by a deputy sheriff.

RQ. You were not taking him, were you? A. No, sir.

Re-Cross Examination by Mr. Baker.

RX. Did you pass any notes into the city jail to anybody while they were there? A. No, sir.

RX. None whatever? A. No, sir.

RX. You didn't give any notes to pass to any person in the city jail? A. No, sir.

RX. Did anybody with you do that? A. No, sir, not that I know of.

(This witness was then excused.)

The Court: Is this your last agent?

Mr. Badgett: We have one more agent, Mr. McCabe was there, but I don't think he was identified.

The Court: Unless you have some other agent that has been identified by these defendants, I think we will close this.

Mr. Badgett: We would like to put on Mr. McCabe. Some of these defendants said they were not able to name all the agents, and the only way I can eliminate them is to put them on to testify.

The Court: I think they were all identified except about one or two questions. I will let you put that in the record. I have heard all I want to hear now.

(Thereupon, N. H. McCabe was offered by the Government as a witness but was not questioned.)

The Court: Does the defense have anything further to introduce?

Mr. Baker: We do not care to offer any proof further, your Honor,

The Court: Do you gentlemen want to be heard?

Mr. Baker: I would like to be heard briefly.

The Court: All right.

(Thereupon, both the Government and the defense argued this question fully.)

The Court: Of course, gentlemen, the question is whether or not the confessions were voluntary. To refresh my self, I have recently read a treatise on admissibility of confessions, which reviews most of the cases very briefly. Of course, the law is, as you gentlemen know, is the question of whether or not they are voluntary.

The first thing to be determined, or rather considered, is that the Court is a forum to get the truth, not interested in anything else, or any irregularity, except as it affects the constitutional rights of the defendants. The thing to do is to try to get at the truth. If a statement was made involuntarily, and the Court knew it was true, still it would be admissible. But I am not deciding this question on that proposition of law. The truth is what the Court wants. The courts have properly stated that an involuntary statement might or might not be true

and should not be admitted in evidence. Involuntary statement means, of course, where one's will, the maker of the statement, has been overreached, and certain things brought to bear on him that it is not a free and voluntary statement on his part. The Courts have held, and I think properly so, that just because a man is under arrest or in custody of officers does not mean that it is not a free and voluntary statement, or the fact that a person is questioned repeatedly, or roughly questioned, does not mean the statement would be involuntary. Of course, that can be considered with other circumstances.

It is also a duty to consider the whole circumstances surrounding the confession, his physical condition, his mental attitude, etc.

Another proposition is, if a person is offered any sort of reward or immunity to make a confession as the result of the offer, that confession is involuntary. It is also to be remembered that a confession must be the result of some duress or promise, but if a confession is made that is not the result of that, the confession is admissible as a voluntary confession. It must be shown that pressure is brought upon him as would cause the confession.

In this case, it seems to me, there is not a showing that there was sufficient pressure on these defendants as far as duress is concerned to overreach their will. The fact is that under their own statements I do not gather that they have seriously said that they made these statements as the result of their treatment. They say they were treated that way and complain about it, but

I do not gather that they state they were forced to make statements not true by reason of any pressure brought to bear on them. If there is a showing to that effect, it is not very strong, as I see it. I think the defendants have exaggerated considerably the treatment they received, but there is no showing so far as duress is concerned, that they were forced to make any statement that was an involuntary statement.

On the question of promise of reward, reduction of sentence or parole, I find there was some talk of that, evidently, from the witness Campbell's testimony, but I do not find any direct connection between the government agents and the defendants about that. There is some indirect connection. It is apparent from the records later, which may be corroborative of that, something said in that record. Statements which pass through different hands can be misundersfood and distorted, and be transported in a stronger way.

I do not think these statements made by the defendants were made by them as the result of any promise of reward, I don't believe the proof shows that. I have a different view of the case, and I think the confessions as made by these three defendants are competent, and I overrule your motion that they be excluded.

Mr. Baker: We note an exception to your Honor's ruling.

Now, before we go any further. Those confessions would not be admissible against any person whose name might be mentioned in them, other than the ones making the confession, and those present when the confessions were made, and not denied by those present.

The Court: I don't know about that in a conspiracy case.

Mr. Baker: After the conspiracy is terminated, and an arrest terminates a conspiracy. I think that is unquestionably the rule.

The Court: Do you mean that any evidence obtained after the close of the conspiracy is not admissible as connecting them up?

Mr. Baker: I don't mean that. As long as the conspiracy is going on. All the authorities say the conspiracy is terminated with the arrest. Then any statement a co-conspirator might make is not admissible against any person except the one making the statement, or somebody who was present and heard the statement and don't deny it. Conspiracy is based upon the theory of agency, which is right while it is going on, but with the arrest and termination of the conspiracy then there is no agency any longer.

The Court: I am unable to see any good reason for that.

All right. Gentlemen, anything else to be said about this question?

Mr. Baker: Yes, Your Honor please—

The Court: I might say this Mr. Baker, in breaking in on you, I spent three-quarters of a day looking into this thing, and I think I am ready to decide it—decide it like you see it.

Mr. Baker: That is very well. If Your Honor please, there is one other matter I want to call the Court's attention to and that is there are a great many names men-

tioned in these statements, and I don't know how the witness can testify in one sense of the word, but I think it is improper to say another party or another defendant met in a certain place, without using their names. In the case of *Gambino* v. *United States,* Circuit Court of Appeals, this case was decided December 8, 1931, it has this language:

"The device of omitting the names of the defendants from the testimony did not save the trial judge error from being prejudicial to the appellants. It would be hard to believe that the members of the jury, who had heard the testimony of the other witnesses, did not identify 'Mr. First Defendant,' 'Mr. Second Defendant,' and 'Mr. Third Defendant:' "

The Court: I contemplated that, Mr. Baker, and, of course, that holds good where the whole thing has been gone into, or the whole thing goes in. In this case, I assume these statements do not involve all the defendants, do they, in one statement?

Mr. Baker: Some statements involve nearly all of them.

The Court: But I thought this, that being true if it don't involve all of them there would certainly be no information to the jury in talking about it, because if there is any name considered they would not be able to say which one was involved. It might be that this particular defendant, or that particular defendant—it differs from the McNabb case, which involved so many they had to be referred to. I can't see how a jury would know. I don't see it—just how he might be referred to by inference. I can't see that there could be any sort of in-

formation gotten over to the jury concerning any particular defendant. In other words, we have to work out some practical way—I am willing as the Court, and think it is my duty as the Court, to get it over to the jury as to the particular defendant, and not involve the others. What do you gentlemen for the Government think about it?

Mr. Frazier: If your Honor please, I don't see anything we can do except read the whole statement. It has been held many times where the Court instructs the jury to disregard the statement as to the other defendants it is not error.

The Court: No, it is not error, but my judgment is if it could be practically done—it is sort of law subterfuge to do it that way. I believe the defendants, if they are entitled to it, are entitled to have it binding on the one man without any inference against the rest.

Mr. Townsend: Of course, we are excepting to the introduction of the statement as a whole, and we don't want to work out anything that would be binding on us as agreeing to the introduction of it, but by way of suggestion I would say where it refers to other defendants that it be given to the jury—and suggest they not even know who the defendants are—as other persons, not naming the defendants in the case.

The Court: How could that be practicably done? I have not seen the statements and don't know how they refer. Has the Government any suggestion?

Mr. Frazier: No, your Honor, I suggest we read the whole statement.

The Court: I don't think that is—

Mr. Frazier: With proper instructions to the jury.

Mr. Townsend: If your Honor would take the statements and look at them we might come to a conclusion about how it could be done.

The Court: Let me see one.

Mr. Frazier: We would be very glad to furnish the statement.

The Court: As a matter of right, if it is the law, which it seems to be, that there are two reasons why these statements would not be binding on any co-defendant—one of which is that the conspiracy as to these defendants, I believe, was not frustrated at the time they made the statement—

Mr. Badgett: The word "binding." I don't think would be the correct word. As I understand the law, if any conspiracy, being the act of any other conspirator is proven, that is evidence against all who are proven to be in the conspiracy.

The Court: That is true. If it is in the course of the conspiracy, while the conspiracy is still alive.

Mr. Badgett: No, your Honor—here is what I mean. These statements—what a co-conspirator said in a confession that another one did, could not be used to prove a conspiracy as to that other one, but under that general rule, that the act of one is the act of all. If we prove, as we have done, by Freed Long, as to who is in the conspiracy, then the act of one co-conspirator as proved by his confession is evidence of the act of all we have proved in the conspiracy.

The Court: I don't believe I follow you.

Mr. Badgett: In other words, the rules of the Court, as I gather them, unless the confession or admission is

made during the existence of the conspiracy and in furtherance of the object of the conspirators—

The Court: And the conspiracy has been proven to exist?

Mr. Badgett: That is correct, unless that is true we cannot be admitted to prove the conspiracy. But in this case, we have proved certain of these defendants—already in the conspiracy—by Freed Long, and under that general proposition the act of one conspirator is the act of all. Then if we prove by the admission—by the confession of one of these men, which confession would be corroboration if we proved he did the act, then that is evidence against all conspirators that we have proven in the conspiracy.

The Court: Well, if he did the act himself, then you would have to prove the conspiracy outside of the confession.

Mr. Badgett: That is correct, but still your Honor used the word "binding"—that is what I am getting at. The act of Felton Woodward, if we prove he did an overt act in furtherance of the conspiracy, in evidence against every one we have proved in the conspiracy.

The Court: What I meant to say by that—yes, that is true. What I meant to say—I might not have used the right terminology—in the confession he gave, not to use the names of others—to involve them.

Mr. Badgett: That is true, but the jury should not be instructed it is not binding on them.

The Court: Well, that is true. What I meant that would not be binding on them as to direct proof of their

conduct. Of course, it would be if there is other corroborative proof to prove the act by him.

Mr. Badgett: We cannot bring a man into a conspiracy by a statement of another co-conspirator which is made after the conspiracy has ceased.

The Court: That is right. Neither can you prove a conspiracy against others even if the conspiracy is in progress, because, first, it has to be proven in a way to set up a relationship for which the statement of the co-conspirator would be proof against others. I don't see where we are disagreeing about this. The only way we disagree about the rule is naming the others who may be mentioned in this confession. You think they can—

Mr. Badgett: I don't think it is error, your Honor, to do it with proper instructions by the Court to the jury.

The Court: Might not be error, but it would be error to my idea—what is proper under the law would be error against my judicial conscience to let something go in indirectly that the law says cannot be in, whether it affects the defendants or Government.

Mr. Badgett: Your Honor ought to have the final say-so about it.

The Court: Well, it is my judgment, gentlemen, that these confessions, under the proof, are obtained at a time when the conspiracy, if any, and I would say there is some *prima facie* evidence of conspiracy, at least there are several defendants, don't think there is *prima facie* evidence of conspiracy as to all defendants, but sufficient to rule on, that is; that so far as these defendants who made the confessions are concerned, the conspiracy is not to be frustrated as to them, and for that reason their

statement would not be such as to directly involve the others, so the Court will permit the reading of the confessions only to be used against the persons who made them; and for the further proposition if there is any corroboration of overt acts that occurred, if there is some evidence as to the overt acts that might involve others.

Mr. Ault: In addition to that, if other defendants were present when these confessions were made—

The Court: Yes, and would be against those that were present when the confessions were made.

Mr. Townsend: And failed to deny them?

The Court: And failed to deny them; which the proof shows, as I recall, two of them failed to deny them, and talked it over and worked it out. And that the confessions should be read with the exception of those who were present and not denying it, without mentioning names, and use "another person" or "other persons." I believe in this particular case we will not have any inference against the defendants because there are so many of them, even if the jury did get the idea they cannot tell which other defendant it was. I believe that way it entirely keeps out all inference against other defendants. Let the confessions be read that way. That is the best I see to work it out.

The Court: Now let's see if all the jurors are here.

Court Officer: They are all here.

The Court: All right, now, we will proceed.

(The Jury thereupon took their place in the jury box.)

The witness, JOHN A. ROACH, being recalled to the stand for further cross examination, testified as follows:

Direct Examination by Mr. Badgett.

Q. I know the defendant Ed Simonds. The first time I saw Ed Simonds was on the 25th of April at the YMCA at Copperhill, he was one of the strikers at the Tennessee Copper Company. I talked to him first during the afternoon of April 25th and I talked to him again that evening on the evening of the 25th of April. I obtained a written confession from him on the 28th of April. At the time he made the confession Mr. Plaxico, Earl Hubbard and myself were present. The confession involves Earl Hubbard. Earl Hubbard did not deny anything Ed Simonds said but on the co rary elaborated on Simonds' statement. Before Ed Simonds made a statement he was advised of his rights, Mr. Plaxico and myself introduced ourselves as being Government officials, as Special Agents for the Federal Bureau of Investigation. He was informed that we were down there to investigate the dynamiting of the Tennessee Valley Authority power lines. He was further informed we desired to question him about his activities at that time. He was informed he didn't have to talk to us and make any statement and that any statement he did make would be used against him in Court. He was not promised anything in consideration of his statement, or threatened in any way. I have that statement, and it is signed by Ed Simonds. Felton Woodward was there at the time the signed statement was taken from Ed Simonds and Felton

Woodward and Earl Hubbard and Ed Simonds described their entire activities. Felton Woodward was mentioned in the statement and he didn't deny anything that Ed Simonds said in the statement. Felton Woodward went into greater detail than Ed Simonds did in view of the fact that he had much more information concerning this transaction and Felton Woodward stated his activities and didn't deny what Ed Simonds said. The statement is as follows:

"Copperhill, Tennessee, April 28, 1940.

"I, John Edward Simonds, make the following statement to H. E. Plaxico and John A. Roche known to me to be Special Agents for the Federal Bureau of Investigation. No threats or promises have been made to me to induce me to make this statement. I have been informed that I do not have to make any statement and any so made may be used in court.

During the latter part of March, 1940, Felton Woodward came to my house and told me that they had decided to blow up the power lines of the TVA and had selected certain men to dynamite these lines. I agreed to go along and Felton told me I was to assist on the Blue Ridge line. On the night of March 31, 1940, I went to Felton Woodward's home in Newtown, Tennessee, and met another individual. Felton Woodward drove this individual and me to Copperhill where we picked up an individual. We then drove over to McKaysville, Georgia, and Felton dropped us off on the road. Felton Woodward had the dynamite and fuse in his car when we left, and I don't know where he got this. Prior to going to Mc-

Kaysville this second individual and I went to a fourth individual's home and borrowed a brace and bit. We told this individual what we wanted the brace and bit for and he gave it to us. Thereafter Felton drove us, that is, the three of them to McKaysville, Georgia, and dropped us off. The other two individuals and myself walked up a hill to where two wooden TVA poles were located and all three of us drilled one hole in each pole. Thereafter we placed one and a half sticks of dynamite in each pole and attached one-hundred feet of fuse in each charge, and I lit the fuse. We then went to our homes.

Felton Woodward told me that another group were going to blow the Parksville line and we heard the explosion from that line before ours went off.

Several days before April 14, 1940, Felton Woodward again contacted me and informed me that they had decided to blow up the TVA power lines again. I agreed to take part again. On April 14, 1940, Felton Woodward picked me up and drove me over to another individual's home in Georgia. He told me that the dynamite was over at this individual's home and that this individual and his brother was going to assist me. Felton dropped me off at this individual's home and drove off. Thereafter one of the brothers got his brother and the three of us went to a hollow log in the woods where they had the powder hidden. There was about fifty sticks of dynamite and a hundred and fifty feet of fuse. All three of us carried this dynamite and fuse to a steel tower of the TVA power line on the Blue Ridge on Hothouse Creek. Upon our arrival I divided the dynamite up in three parts in order to place it on three legs of the tower. I placed

fifteen or sixteen sticks against one leg when the individuals who were with me got scared and ran off and left me. I continued on with my job and placed the rest of the dynamite around and lit the fuse. I used fifty feet of fuse to each charge. Thereafter I walked to my uncle's home in Cherokee County, North Carolina. I stayed there about two hours, ate breakfast and then went home.

Several days prior to April 23, 1940, some one informed me they wanted me at the Union Hall in Isabella to attend a meeting. I went over there and there were present, among others, Felton Woodward, and they were having a conference. One individual said he thought he was probably sticking his neck out but he wanted to shut down work in the Tennessee Copper Company. This individual said that he had decided on another dynamiting of the TVA power lines to shut down the plant and set a definite date several days ahead for this dynamiting. It was decided that Woodward was to arrange for the dynamiting of the Blue Ridge line, and that two other individuals were to assist me. Some question arose about the powder and the first individual said that the powder is here. Some one else said that some other individuals had the powder, and the individual leading the meeting said that arrangements would be made to blow up the Parksville line on the same night. Some men were supposed to attend this meeting to make plans to blow up the Parksville line but they did not show up. We waited for them for about one hour and then went home. This individual who was leading the meeting said he would make arrangements for this later.

On April, Monday the 22nd, Felton Woodward told me to meet two other individuals at another individual's home in North Carolina. I walked over to this individual's home and met them there. The individual at whose home we met had one-hundred and one sticks of dynamite, and one-hundred feet of fuse in the lower side of his garage. The two individuals we met over there, and Simonds, took this dynamite and fuse and walked to the Wolf Creek section of Georgia where we picked out a steel structure TVA tower. We remained in the woods all night Monday, all day Tuesday until about one A. M. on Wednesday morning when we blew up this tower. We placed twenty-five sticks of dynamite to each leg of this tower and cut the fuse to about twelve feet lengths because some of the fuse was wet. After blowing this tower we all three walked back over to this individual's home in North Carolina and ate. We remained there several hours and then went home.

I have read the above written statement in the presence of H. E. Plaxico and J. A. Roche and the same is true and correct.

(Signed) J. E. Simonds,

and witnessed by H. E. Plaxico, Special Agent in Charge of FBI, Knoxville and J. A. Roche, Special Agent, FBI, Knoxville."

Before I took the statement I obtained a verbal confession from Ed Simonds, the verbal confession was made immediately before the signed statement. In the verbal statement we had quite a discussion about the short fuse. Ed Simonds went into a lot more detail than we put in

the statement. He said on the night of the 23rd of April, rather the early morning of the 24th, at 1:00 A. M. that they blew up this last tower, that they had been out in the woods all day and all night and it was raining quite hard, and they were afraid some of the fuse had gotten wet, so they cut the fuse down to twelve foot lengths, and Ed lit the fuse with his cigarette lighter, and they were armed with shot guns at the time, and immediately after lighting the fuse they left the vicinity and they didn't think the fuse would carry the fire to the dynamite as fast as it did, and the first blast that went off surprised them, and as a matter of fact threw them to the ground. They were under the impression some law had been lying in ambush and had shot at them with shot guns and they began pointing their shot guns around in an effort to see who was shooting at them. He said after that the second blast went off and threw rock and debris all over them and they realized what was happening, so they took off and it was dark, and Ed Simonds was in the lead and while running down a little incline he fell in a ditch and the two individuals that were with him fell in on top of him; and Ed said he didn't realize even up to that time how nobody got killed with them all falling in this ditch with their shot guns; and he also mentioned while he was in the ditch he lost his watch. However, he retrieved his watch before they left the ditch.

Before I took the statement—in reference to the first dynamiting on the first of April, Simonds told me that after they walked, left McKaysville, Georgia, we walked back into Copperhill by going over the L & N trestle

that led from Copperhill into Georgia, in the vicinity of McKaysville. One of the individuals with him had an auger which they used in drilling the holes and dropped this auger in the Toccoa River for the reason in the event they were questioned by the law they would not have any evidence on them. I subsequently took Ed Simonds and drove to this L & N trestle and he pointed out the exact spot where this individual had dropped the auger and Agent Mann and myself, accompanied by two deputy sheriffs, subsequently retrieved that auger from the river. It was found exactly where Ed Simonds had told us it had been dropped. Agent Mann and one of the deputy sheriffs waded in the river and got the auger out. I have examined the auger which you have just handed me and this is the auger taken out of the river, it is the auger which we retrieved from the Toccoa River. I file this auger as Exhibit No. 5 to my testimony. Creed Brock, another deputy sheriff, Agent Mann and myself were present when the auger was retrieved and I believe Creed Brock and myself were out there when Ed Simonds pointed out the place where the auger was. Ed Simonds told us that they used the auger, that they bored holes in these wooden TVA power lines in the vicinity of McKaysville. In reference to that he said all three of them had assisted in the drilling and one of the boys was not any too strong apparently because he told him to get away and let a man turn it. In reference to the other dynamiting that occurred on the 14th in the Hothouse Creek Section of Georgia, he asked me if blood hounds had been used in an effort to track down the individuals who had dynamited that tower. Bloodhounds had been

used and I told Ed Simonds we had used bloodhounds and we were all laughing and talking there and he said how far did the dog get. I said Ed he didn't get very far. I remember that the man that owned the dog got very mad about it because the tracks were obvious and you could see track with your naked eye and yet the dog would not go over ten or fifteen feet, so I said the dog couldn't follow these tracks and I asked him why. He said prior to that time he had determined that an ingredient, such as pepper or turpentine or gasoline would throw bloodhounds off a track and he said he had used a gasoline sack, soaked rag on his feet and he knew the dog could never follow his track. That is all I remember of Ed Simonds' oral statement. Immediately after Simons had made his confession, telling of his implication and we were talking to Simonds, Earl Hubbard was sitting, I think he was lying on a cot about three or four feet away from where we were having our conversation and immediately after Simonds confessed Hubbard said he desired to tell us the truth about his implication in the matter and he gave us a verbal statement about that time concerning his activities in this case. I have since seen the written statement given by Earl Hubbard and it does not materially vary from the oral statement which I heard him give. At the time we talked to Earl Hubbard and he confessed verbally he denied he had been implicated in either of the first two dynamitings. He said the first connection he had with any of the dynamiting was on the 18th of April, when he attended that meeting of one of the—well, we had better just say he attended a meeting

in Copperhill, Tennessee, where the strikers were having a union meeting; and at this meeting there were several individuals present and they discussed ways and means of stopping production at the Tennessee Copper Company and they entered into a lengthy discussion at that time concerning further dynamiting of TVA power lines. Now, that was after two sets of dynamiting had occurred, one on the first and one on the fourteenth; and arrangements were finally made at that time to set off another dynamiting on the 24th. Earl Hubbard agreed to assist Felton Woodward in moving some dynamite that was to be used for that purpose. He stated on the 22nd of April, according to arrangements made with Felton Woodward, he met him on the road near Ducktown and that they in company with two other individuals drove over to Barnes Chapel, where they contacted another individual and then they proceeded to near Galloway, Georgia, and obtained some dynamite there in a hollow log that had been hidden up there, and some fuse, and thereafter they drove over into this other individual's—to another individual's home in Cherokee County, North Carolina, where they left one of the men and all this dynamite, and then they came back over—went back home to Copperhill. When Felton Woodward came in Ed Simonds wanted to tell Felton Woodward he had confessed and so did Earl Hubbard and they didn't want to put Woodward on the spot. Ed Simonds made a request to have Woodward brought in. He stated Woodward knew more about this than anybody. I want to tell him I confessed, so we immediately sent out for Woodward, naturally if he had more information

that is what we were down there for, we wanted to talk to Woodward, and Woodward came in, and upon being apprised of the fact Felton Woodward and Earl Hubbard had confessed, he said, "not much I can do about it—I will tell what implication I had in it." So he went into great length. He stated during the latter part of March he attended a meeting over in Ducktown, Tennessee, and at this meeting certain dynamitings were discussed, and he said on the 31st of March he received specific instructions from one of these individuals at the union hall in Ducktown to arrange for dynamiting both power lines that night. He then drove to an individual's home in Georgia and there made arrangements with this individual who lived there, and another striker who was present there, and they agreed to dynamite the Parksville line that night; and thereafter drove these individuals to a third individual's home, and they picked up this third individual. They drove to the Rogers Ferry Bridge, which is outside of Copperhill and dropped two of these individuals off at Rogers Ferry Bridge just about dark. Thereafter he and this other individual drove over back to Ducktown to an office of an individual over there, and they obtained a quantity of dynamite there—as I recall he said twenty-five sticks of dynamite, and I believe a hundred feet of fuse. Then he had a conversation with this individual in his office and informed him they needed a brace and bit for the purpose of drilling these holes, and this individual in the presence of his secretary or fellow he had there working for him, advised him he had meant to get a brace and bit for them and had forgotten it, so he instructed this individual that worked for him to

get a brace and bit. Now, this individual told him he thought he knew of an individual in Ducktown who had a brace and bit and he would go get it, so he made arrangements with Woodward to meet him at the L & N Railroad station.

Q. Which Woodward is that? A. Felton Woodward, a little bit later that night. Thereafter he drove this other individual back to Rogers Ferry Bridge where they had previously let off the other two; he got out of the car, took half the dynamite and half the fuse, and went up in the woods, and Felton said although he didn't see the first two individuals at that time he supposed they were going up there to meet the other two to take care of the Parksville line. He then came back to Copperhill and he sent one individual over to another striker's house, and instructed him to meet him at his home. He then went over to Ed Simonds' house and told Ed they were making arrangements to dynamite the Blue Ridge line that night; so he and Simonds came back over to Felton's home, at which time they met this other individual. Then they drove from there down to the L & N Station for the purpose of picking up this brace and bit. However, he said they were later than they expected to be and this other individual, if he had shown up, had left, he must have gotten tired waiting, any way he didn't meet this fellow and didn't get a brace and bit. They then went over to the picket line and picked up a third individual and dropped off another individual to take this fellow's place on the picket line. He stated he drove these three individuals over into Georgia and went up to a fourth individual's home where they obtained an auger.

That auger was just shown to you, and they informed this fellow what they were getting the auger for. He said then he drove them to a place near McKaysville, Georgia, in the vicinity of Jim Allen's home and dropped them off and then he came on back home, and subsequently the dynamiting occurred. Then he advised that about the 8th of April he was again present at this office in Ducktown when one of the strikers informed him there was a case of dynamite in Chattanooga, and the individual whose office he was in asked him to come to Chattanooga in order to get the dynamite. He agreed to come up here and get the dynamite and received $10 for the purpose of making this trip. He said he carried his wife and little boy named Jackie with him in order to throw off any suspicion. He said they drove up here, got into Chattanooga and drove out to his sister's, Katherine Porter's, where they left the little baby and he and his wife came to town to the Key Hotel, and according to arrangements, he met two individuals at the Key Hotel that night and they then attended some sort of labor meeting at the County Court house. After the meeting they returned to the Key Hotel and upon instructions Felton went over to the Gulf Filling Station on Tenth and Broad and this individual came over in an automobile and they transferred the case of dynamite from one car into Felton's car. After further discussion they decided they didn't have sufficient dynamite, and arrangements were made for Felton and one of these individuals to go to Bessemer, Alabama, for the purpose of getting some more dynamite. So Felton Woodward went to his sister's home that night, and the following

morning went to these individuals he had contacted at the Key Hotel, picked one of them up, and the two of them drove to Bessemer, Alabama. They went to a union hall, where the first individual left his car there, obtained another car from a friend in Bessemer, and then he said he took this car and drove to the Hercules Powder Company and purchased three cases of sixty percent dynamite and five hundred feet of fuse. At that time he thought, or had been informed, he would not have to sign any tickets for it, but they were mistaken on that, and he signed the name of John M. Cash to the receipt for the dynamite and fuse. They loaded the powder in the car and he drove back toward Bessemer and met this individual in his car, and they transferred the dynamite at that time into this fellow's car he came down there with. They then spent the night at this man's home who lives in Bessemer, and the next morning drove back to Chattanooga, Tennessee. They then transferred the dynamite from this individual's car to Felton Woodward's car. Felton said he was afraid to bring his wife and baby home with that dynamite in the car, and he said this fellow agreed that it would be dangerous, and this individual carried Felton and his wife back to Copperhill, Tennessee, without the dynamite, left it in Chattanooga in Felton's car. They arrived at Copperhill and spent the night, and the following morning, Felton Woodward with two other individuals came back with this fourth man who owned the car, to Chattanooga. Then Felton got his car with the dynamite and one of the individuals accompanied him from Chattanooga back down to a point in Georgia near where another of the strikers

lived. They then hid the dynamite in the vicinity of this individual's home. Then after, thereafter, Felton said they had another meeting, I believe he said at the union hall in Isabella, where further dynamitings were discussed, and numerous individuals were present at that meeting. Arrangements were then made to dynamite the lines again on the 14th. Now, in reference to that Felton went to Georgia and made arrangements with some individuals for dynamiting the Parksville line, and he carried Ed Simonds from Ed's home to the point in Georgia where he met two other individuals for the purpose of dynamiting the Blue Ridge line, then he came back home again. That was the dynamiting on the 14th. Felton went into great detail about a meeting held the 18th where further dynamitings were discussed, and he named numerous individuals at that meeting. Arrangements were then made for a dynamiting on the 24th. At that meeting they also discussed the advisability of dynamiting the Isabella mine, and discussed as to whether they would use clocks or use fuse. It was agreed that fuse would be better, and as I recall they thought if they used clocks the one that went off first might pull the wires away from the others. Anyway, that was the arrangement at this meeting. Felton again contacted these individuals in Georgia and made arrangements for the Parksville line, and on the 22nd he drove from Copperhill to Barnes Chapel, carrying two other individuals with him. They picked up a third individual, he said he picked up Hubbard and with this other individual, they went to Galloway, and Hubbard got the dynamite accompanied by this other individual, out of a hollow log, and there-

after drove to another individual's home in Cherokee County, North Carolina, where they left the dynamite and one of the individuals, and he and another individual came back to Copperhill. I believe that is all.

That is Felton Woodward's statement I have been telling about. He had not made a written statement prior to that time but did make a written statement the following day. When Felton Woodward was discussing these matters he told us that somebody else was present, that there were several present. I took the statement of Theodore Woodward, Felton's brother, and I have that statement with me.

Cross Examination by Mr. Baker.

I have been with the Federal Bureau of Investigation since July, 1936, and I am a graduate of a law school, the University of Buffalo. I never practiced law. At the time of this investigation I was stationed in Knoxville, Tennessee. Immediately after the time of the second dynamiting on April 14th, Mr. Mann and I went into the Basin to investigate. We got there on the 16th day of April, 1940. This Exhibit which you have passed to me is marked Knoxville Exhibit No. 4, and is fuse found in the Hothouse Creek Section of Georgia, at the dynamiting which occurred there on the 14th of April. Special Agent Mann and myself and Sheriff Biggs were together when this fuse was found. The fuse was on the ground at that particular dynamiting, the fourth one, lying on the ground, leading up to the tower, two or three feet from the base of the tower. That particular tower had not been destroyed, that is where the three

legs of the tower were destroyed and it was leaning over at an angle. I would say there was 100 feet of fuse there and we didn't get it all, we only picked up fifty or sixty feet of it. The fuse was lying flat on the ground, stretched out.

Exhibit No. 2 is fuse found by Agent Mann, Sheriff Biggs and myself in the Hothouse Creek Section in Georgia dynamiting that occurred on April 1st, where a wooden pole was blown. We found this fuse on the 17th day of April, 1940. At that time the structure had been repaired. The new structure was immediately adjacent to the old structure. The old structure was blown off and there were two stumps in the ground about that high and two new poles were adjacent to that. This fuse was within two or three feet of these stumps and this particular tower was located on a hill and the fuse was lying on the ground in two or three feet of the stump. I believe there was 100 feet of fuse, separate pieces of fuse, as if two charges had been exploded. The way it looked, it seemed as if that fuse had been to both stumps, run this way, and where they could light the fuse here, and the fire would come up to a V, and then go to both poles.

The fuse you have passed me is Knoxville Exhibit No. 3. The fuse was found by Agent Mann, Sheriff Biggs and myself along the water level road four or five miles from Copperhill in Polk County, Tennessee, a dynamiting that occurred on the 14th of April, 1940. Sheriff Biggs was with us when we found that fuse. There was a steel structure tower on the right-hand

side of the water level road I would say 100 feet off the road. The fuse was found much the same as the others, lying along on the ground in the vicinity of the tower, which was lying down. There was around 100 feet of the fuse. As I recall I believe there were separate pieces of fuse had been used for each of the legs of the tower, and the tower had been blown down on the side of the hill.

This piece of fuse you have handed me is marked Knoxville Exhibit No. 1, was found on the Grassy Creek Section of Polk County, Tennessee, at an explosion on the 1st day of April, found by Sheriff Biggs, Agent Mann and myself. That was a wooden pole and it had been repaired. The fuse was about the same as the other at the other places, two or three feet from the stumps of the old poles and was found on the 17th day of April. We didn't find any fuse at the explosion on April 23rd and 24th. The explosions were so terrific it had blown everything sky high.

When we first went into Polk County to investigate these dynamitings Agent Mann and I first contacted Sheriff B. E. Biggs and had a conference with him about what he thought of these various dynamitings and discussed with him who he might suspect. He told us at that time that he did suspect quite a number of people and we had a discussion at that time, he mentioned 80 or 90 individuals possibly that might be involved in such a thing and we discussed with him the manner and method to use to talk with those various men. We had a right to talk to any individual and of course couldn't very

well talk to them unless they were in custody. We talked to quite a number who were not in custody. We did make arrangements and he said he would make deputy sheriffs available to us to take us to these various places to talk to anybody. No mention was made at that time about taking anybody into custody. Shortly thereafter we had a conference, after this confidential information had developed this information as to who was present at meetings where dynamiting was discussed. At that conference Mr. Biggs said he was going to lock all of them up who were at that meeting and we concurred to this extent. We told him we would like to talk to these individuals very much if they were present where a dynamiting had been discussed. We didn't make any special request of the sheriff to take them into custody but we did say we wanted to talk to them and we told Sheriff Biggs that we wanted to talk to them and that we were interested in talking to them. We didn't ask him to furnish us any office to talk to them in. We could talk to them at the New York Hotel where we had headquarters. When we came down there Mr. Biggs was very cooperative with us in every way, and offered us all facilities at his disposal, not only the YMCA building, but any other building. We talked to most of the defendants in the YMCA building. I don't know whether the YMCA building was used to house Tennessee Copper Company guards or not, I didn't know they were to be used as such; as far as I knew they were just deputy sheriffs. There was some twenty or more of them quartered in the YMCA building in army style. I never was upstairs. I was in the only bed room I know on the first

floor, there were two cots, and we used that particular room as our office to question these men. I didn't know when Ed Simonds was taken into custody. The first time I saw him was on the 25th of April in the YMCA building. I don't know how he got to the YMCA building, I didn't tell anybody to bring him there. Ed Simonds was one of the individuals mentioned at the meeting and I did want to talk to him and the following day after the sheriff said he was going to arrest them, Sheriff Biggs told Mr. Mann and myself that Ed Simonds and Earl Hubbard were down at the YMCA building and we immediately went down there, that was on the 25th of April. The Sheriff told us he had them at the YMCA building. We didn't know whether Ed Simonds had anything to eat the night before or the day before. That was in the afternoon when we first talked to Ed Simonds I believe, around two o'clock, one or two o'clock, and we talked to him approximately two hours and left him there at the YMCA. I don't know whether he stayed there or where he went after we left I don't know whether he had anything to eat that night or not and I didn't care whether he had anything to eat; I was not interested in whether he had anything to eat or not. Agent Mann and I came back on the night of the 25th and talked to Ed Simonds again. It was about seven o'clock when we got there and on that occasion we talked to him approximately two hours. I don't believe I talked to Ed Simonds any more until the 28th of April, Sunday afternoon. I cannot say whether he had anything to eat on the 26th or 27th of April or not, other than his own statement he made to me, that he had been getting good food, the best food he had had since he came out on strike,

and the Sheriff's assurance that he was fed. He did not make any comment to me about not being fed or being hungry, there was no reason for that question to come up. I don't know where he slept at night or whether he had a place to sleep or not and didn't care whether he had a place to sleep, I didn't consider that was my responsibility. It was entirely up to the Sheriff to make him available so I could talk to him and that was all I was interested in and the rest was entirely up to the Sheriff. I cannot say definitely how many of the other agents talked to Ed Simonds between April 25th and 28th. I know Mr. Plaxico, Mr. Mann and myself talked to him. I believe that is all the agents that talked to Ed Simonds. I don't know whether anybody else talked to him other than Morgan on the 26th and 27th or not. The largest number of agents present when we talked to him was Mr. Mann, Plaxico and myself at the time he made the confession. All the agents we had on that investigation were H. E. Plaxico, R. T. Mann, E. M. Hevron, J. E. Lunsford, C. A Whitten, N. H. McCabe, R. L. Morgan and myself, eight altogether. We could have questioned the defendants at the New York Hotel. We didn't do that because we were instructed other wise by the agent in charge, Mr. H. E. Plaxico. It was inappropriate for these men to come in and out of the bed rooms at the hotel, the rooms are small and I believe it would have been an inappropriate place. They have a restaurant there as you go into the hotel and you have to go through the restaurant to the rooms upstairs. I knew when I got down there that there was a strike on. I learned that the deputy sheriffs had barracks at the YMCA and I knew

there was twenty or twenty-five of these special deputy sheriffs quartered there at the YMCA. I don't think the deputy sheriffs were bitter enemies of the strikers we were questioning. I know they were not enemies from the conversations with the defendants and deputy sheriffs, some of them were pretty close, I wouldn't say they were very close friends but some of these boys were held in pretty high esteem by the deputy sheriffs. I would not know whether there was constantly a crowd of armed deputy sheriffs walking back and forth at the building while we questioned Ed Simonds. We were in a private room with the door closed. If they walked back and forth I don't know. However, when I would walk out of the room I would see them around there, from eighteen to twenty-five of them and there would be three or four or five around at that time and they always wore side arms. They didn't carry two pistols. I only saw them with one pistol. They didn't carry any shot guns around the building, as I recall it they kept the shot guns in their cases. I stated a moment ago that we had confidential information early in this investigation, we had confidential information that a dynamiting would occur at 1:30 A. M. on the 24th, and it occurred at 1:17 A. M. and was confidential information in that respect that proved to be correct what there was of it. While I was questioning Ed Simonds and Felton Woodward and Hubbard, I told them that we had information that they had attended certain meetings at Ducktown and Isabella at which dynamitings were discussed. That was the extent of our confidential information. I told them I had information to that effect. When one of them would make a statement, Hub-

bard, Woodward or Simonds that disagreed with the information we had we tried to reason with them and point out the fact that we had been informed otherwise and that he was not telling the truth about it, that he was mistaken about it, if the statement didn't coincide with the information somebody was lying. When we would interview one of them, at times we would tell him he was misrepresenting a fact and probably during the course of the afternoon would tell him as many as a dozen times that he was misrepresenting the facts. That is the usual procedure that the FBI has to try to reason with an individual and point out discrepancies in his story that would indicate to him that what he is telling was not the truth. We took his alibi and checked back information that had been told us, and it was not corroborated by his family or relatives of whatever he was depending upon. Ed Simonds and all the rest of them told me they were not guilty when we first questioned them and they also told me on the second time we questioned them that they were not guilty. He was not questioned for four days and nights I don't think, not for that long. I will make this statement, on the 25th of April he said he was not guilty and on the 28th of April he changed his mind. I believe Sheriff Biggs was present the first time I questioned Simonds in the afternoon, Roxie Campbell was not present to my knowledge and I believe that Sheriff Biggs was present the second time we questioned Ed Simonds, he was in and out all the time. He would apparently become tired and leave the room and come back. Ed Simonds did not get to see a lawyer or any of his family while he was up there. He didn't make any

such request of me. I never saw him talk to anybody except deputy sheriffs or Agents of the FBI after the 25th of April. I never saw him eat anything all during the time he was there. I didn't interview him during breakfast or lunch or dinner when a person would be eating; we would be eating ourselves. As I said before I don't know whether he had anything to eat or not, no further than his own statement and the statement of the Sheriff. I didn't see him eat. In the room where we questioned Ed Simonds and the other men I don't recall there were any shot guns, rifles and pistols hanging on the wall. It does seem to me there was a cabinet in there that probably had shot guns in it over in the corner of the room. They were in evidence there, there were firearms at various places in the room. As I said I don't recall seeing rifles but I do recall seeing shot guns. I talked to Ed Simonds about the strike but I didn't ask him why he didn't go back to work. We had a very definite understanding with Simonds and the rest of the defendants we interviewed that we were not interested in the strike, had no jurisdiction over the strike, that the only thing we were interested in was the destruction of Government property. I didn't tell Simonds he should quit the strike and go back to work and I didn't tell Felton Woodward we were down there for the purpose of breaking the strike. I only know of two jails in Copperhill, the city jail and county jail. The YMCA was not a jail, it was primarily used to house those guards. I don't know whether Simonds, Woodward and Hubbard spent the night at the YMCA or were taken to the city or county jail. I would leave them at the YMCA building.

I didn't question them at the county jail, because the only time I questioned any of them was the time Mr. Biggs would tell us the individuals were at the YMCA. The county jail, as I recall it, I didn't see it during the investigation, but I saw it last month, and it would not have been an appropriate place to question them. I didn't think it was irregular to question these strikers in the midst of the company guards, I was not interested in the strike and didn't question them about it, I did question them in the building used by the guards. That wouldn't be any worse than questioning them in jail in the presence of policemen. I don't know whether the YMCA was owned and controlled by the Tennessee Copper Company or not, some called it the city hall and some called it the YMCA.

I first questioned Earl Hubbard on the afternoon of April 25th, about two o'clock in the afternoon. I questioned him about two hours and that was also in the YMCA. I questioned him again on the 27th during the afternoon for about 45 minutes. That was shortly after lunch, about 1:30 or 2:00 o'clock. He didn't get sick on that occasion. He was not sick on Friday but did get sick on Saturday. No, it was the 26th when I questioned him and the 27th was Saturday when he got sick. I didn't question Hubbard on the 27th of April, I questioned him on the 28th. I did see him around the YMCA during the day of the 27th and I saw other agents questioning him. I don't recall seeing him there on the 27th, I don't know whether he was there off and on all day or not. I do recall some conversation about Hubbard having a

cold and sending for a doctor on the 27th, yes. On the night on the 28th when he made the verbal statement to us he was not sick and was not lying down. We asked him how he was feeling and he said he felt much better. I understand the doctor had given him some Vicks Salve and he had rubbed that on his chest and throat and was far from being a sick man at that time. When I saw him on the 27th at the YMCA when being questioned by the agents as I recall he had glasses on. He was in a little room at the corner of the building and I was out in the main part of the room and I couldn't see well, but remember seeing him in there and at that time the door was open, and the guards who would have occasion to go upstairs would walk back and forth through the building. The guards didn't sneer and laugh at the defendants as they went through the building. That is the only three occasions when I talked to Earl Hubbard. I don't know whether he got to smoke a cigarette on Saturday or not, I was not in there long enough to say. However, he smoked constantly on the 25th, that afternoon and evening, and on the 28th, he smoked any time he pleased as far as the agents were concerned.

I do not know whether he had anything to eat on the 27th or not. There was no mention by him of not having any food. I know that Woodward and Simonds mentioned they had been well fed, and the sheriff assured me the defendants were receiving the same food that he and his deputies were eating. No mention was made about not. If any of them had said they were not getting proper food I probably would have spoken to the

Sheriff about it. I care if anybody has something to eat if they are hungry. I said awhile ago I didn't care whether Ed Simonds had anything to eat or not, but you are talking about Hubbard now and as far as the investigation in general is concerned I was not interested in food as such.

I first talked to Felton Woodward on the afternoon of April 25th about four o'clock and talked to him about two hours. I talked to him again on the evening of April 25th and talked to him about two hours on that occasion and got through about nine o'clock. I do not know where he was taken when I got through talking to him, I left him at the YMCA, left him there with the deputy sheriff when we finished talking with him and went back to the Hotel and we walked out and left them there. At the various organization meetings of the FBI at the New York Hotel as I recall, I will have to differentiate, Agent Mann and myself had several meetings prior to the time the other agents came in, he and I went there on the 17th and no other agents came in until the 24th, and during the time between the 17th and 24th we had what you term organization meetings, Mr. Mann and myself, Sheriff Biggs and Roxie Campbell and certain deputy sheriffs and then after the other agents got there we had what you term organization meetings wherein agents alone participated, Sheriff Biggs was not present at these meetings. We had meetings wherein these agents were present and as I recall it if you want to call them meetings we had conversations with the Sheriff and his deputies when the agents were not present and meetings when

the sheriff was not present. We had a meeting on the 25th of April after Mr. Plaxico came in. Mr. Plaxico called the agents in and explained the case to them and I don't believe Sheriff Biggs was present at that time, and shortly after that we had another meeting and I believe Sheriff Biggs was present and probably Roxie Campbell. We got this confidential information I was talking about awhile ago on the 23rd of April. The information we obtained on the 23rd of April from Freed Long was to the effect that on the 24th they were going to dynamite both lines in the Isabella Mine and we decided to wait around until the 24th to see if that actually occurred. The first time I talked to Freed Long was on the night of the 23rd of April. Sheriff Biggs brought him to see us. At an organization meeting on the 25th of April Sheriff Biggs and Campbell were present. Mr. Plaxico didn't tell Roxie Campbell in my presence on the 25th of April that any of these men that would come clean that he, Plaxico, would come before this court and ask that that man be put on probation and arrange their bond and to my knowledge that statement was not made. I do not know whether Agent Mann recommended when the men were committed to the jail of Hamilton County that they be placed under $1,000 bonds except, instead of $3,000 and those who had not signed statements under $3,000. I was at Copperhill on that date. I am positive Agent Mann didn't go before the Commissioner on the 3rd day of May, 1940, and request that Felton Woodward's bond be reduced to $1,000. My records show he was in Knoxville the 3rd of May. Ed Simonds, and I believe Creek Brock and a deputy sheriff named Dale, went to

the L. & N. Railroad bridge over the Ocoee River in a car which belonged to the deputy with whom I was. I believe it was Brock. The first time we went out there with Ed Simonds we didn't get the auger, we couldn't get it, the water was too high and I decided to make arrangements with the TVA to cut the dam off so we could get to the river and retrieve the auger. Ed Simonds got out of the car and all three walked underneath the trestle and walked to the bank there and Ed Simonds told me the auger was just on this side of the center piece of the bridge. There is an island in the middle of the river where the center piece comes down and I believe the water is equally deep on either side of the island. At that time the island was not covered over with water but the water was pretty high. I would say it was at that time at least three feet deep. The first time I was there was on the 29th day of April. I don't believe the water was moving any more than a mile an hour, just a rippling stream. It would not have been physically impossible to wade out in the river on the 29th and gotten the auger but would have to wade out up to your hips. I came to Chattanooga the 29th of April and returned to the railroad bridge on the 30th of April and I believe it was in the afternoon of the 30th, when we retrieved the auger. The TVA declined to assist us and shut the water off, said they couldn't and then we had to wade out into the water. It was just as high then as it was the day before. It is not a swift stream of water, more or less a rippling stream. We didn't wade from the bank where the road is across the stream to where the auger was. Mr. Mann

and John Hood and myself went across the trestle and lowered a rope and was going down to the island by rope and as I recall Creed Brock had a tow rope in the car and it didn't appear to be any too strong and we changed our minds and went across the trestle to the other bank and waded to the island and Agent Mann and the other party waded out from the Island and got the auger and this is the auger we found and I positively identify it. I actually saw the auger in the river. We attempted to take pictures of it while it was in the water and have the pictures developed, but the stream was rippling and we got pictures of the stream but couldn't discern the auger in the water. They took pictures of it as it was being brought out of the water. As I recall it was directly underneath the railroad bridge. The auger was laying, as I recall it, the river runs approximately North and South and as I recall the point was pointed towards McKaysville and this point down the stream. It was at right angles to the bridge, laying flat on the bottom. In the statement Simonds told me the auger was thrown in the river on the 1st day of April, 1940. I don't know whether it was in the same position at the time we got it out as it was when it was originally thrown in but it was still directly under the bridge when we got it, flat on the bottom and at the place where Simonds said it would be. I don't recall it having rained any during the time I was in the Copper Basin from the 16th of April to the 29th or 30th. Yes, I do, we had a heavy rain there when we went out to investigate the dynamiting of a home and an automobile about the 18th of April, because

I recall we took some pictures and plaster casts of tire treads and foot prints and it was raining at that time. I couldn't say whether it rained any more or not. I went to the scene of the explosion in the Hothouse Creek Section. This is very rugged country and the underbrush is very heavy. When I first saw Ed Simonds on the 25th of April, I don't believe I examined his legs and knees and hands. I did when we took his description, asked if he had any scars or marks and there was none that I recall. When I walked out to where this tower was blown I didn't get scratched, I didn't get scratched at that particular time. I climbed a clift and fell about forty feet and burned my knees but not from twigs or underbrush.

Re-Direct Examination by Mr. Badgett.

Felton Woodward in his verbal statement to me told me that he knew Freed Long and he mentioned Freed Long in that statement. He told me Freed Long attended one of the meetings at Ducktown or Isabella where dynamiting was discussed. The meeting was on the 18th of April. The men who were stationed there in the YMCA, were employed as I understood as deputy sheriffs in Polk County under Sheriff Broughton Biggs. When I said awhile ago I didn't care whether Ed Simonds had anything to eat or not, as I tried to explain, there was no reason for the question of food to come up. Ed Simonds nor any of the other defendants ever asked for any food and when we interviewed them, and at lunch time we would go to lunch and would call the Sheriff and say we were going to lunch and he would say I am going to send these fellows up stairs and feed them. Broughton

told him they were being fed the same food as his deputies. They had a very well equipped kitchen upstairs and had a very fat jolly cook down there. On the 28th, after all three had verbally confessed they talked about the food and treatment they received and said they had never had such good food since they came out on strike, that is Felton Woodward, Earl Hubbard and Ed Simonds. These men were the Sheriff's prisoners and he was feeding them. If one had told me he wanted something to eat I would certainly have gotten him something to eat. Freed Long told us the blast on the 24th was going to occur at 1:30 A. M. and it occurred at 1:17. I remember discussing it thereafter and telling him he missed it by a few minutes. I didn't, and no other FBI agent in my presence or to my knowledge ever made a demonstration with fire arms or anybody else that I know of, towards the defendants. There were fire arms in the building but they were out of the way. Certainly we wouldn't be questioning anybody we thought might make use of firearms and leave them where they could get them.

Re-Cross Examination by Mr. Baker.

These men were the Sheriff's prisoners. The sheriff did not pick them up at my request. However, they were always available in the YMCA when I wanted to talk to them. I don't know how they got there but they were always available when I wanted to talk to them at the YMCA. I left them at the YMCA when I left to talk to them again and when I wanted to I would go back to the YMCA and they would be there.

(This witness was then excused.)

The witness, JOHN HOOD, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

Mr. Badgett, my name is John Hood. I am not an officer now but in the past I was a deputy sheriff at Copperhill. I believe I came in the first of June, 1940. I was a deputy sheriff during the time of the alleged dynamiting. I think I had been a deputy sheriff about five months before that time. I knew Mr. Roche. I once went with him to the Ocoee River to a railroad trestle and we found a bit in the river there. There are two sloughs there the best I remember and the bit was pretty close to the edge of one of them and was under the railroad bridge. I have examined the auger which you have handed me and that is the auger we found in the river.

I believe Creed Brock found it and I went out and got it. Pictures were made of me while I was getting the auger out of the river. The picture you have shown me is my picture and I will file it as Exhibit No. 1 to my testimony. The picture you have just shown me is a picture of the trestle there over the river and I will file it as Exhibit No. 2 to my testimony. I have examined a group of pictures which you have handed me and they are pictures of the scene around there. I will file them all as Exhibits 3 and 4 to my testimony. Creed Brock and Roche and some other fellow was with me when we found the auger in the river. I don't remember whether Mr. Mann was along or not. The other man who was with us took the pictures but I don't know his name, he is the one who took the pictures.

Cross Examination by Mr. Baker.

I don't remember just when I went to work as a deputy sheriff. My home is in Reliance in Polk County, Tennessee. The Copper Company had already opened after the strike when I went to work. I don't know what date it was I went to the river there to get this auger. The water was not very high, it was low and I supposed they would have the water shut off. I made two trips to the bridge out there. The first time I went out there Sheriff Biggs and Roche were with me. I don't remember whether Ed Simonds was along either time or not. On the first occasion we were up there didn't anybody seem to know exactly where the auger was and I don't know whether anybody pointed out the place where it was or not. Sheriff Biggs did say it was there somewhere, I remember hearing him say that it was in there somewhere. The auger was laying up and down the river. I don't remember whether the point was up the river or down the river but do remember it was lying up and down the river. The water, I imagine, was about 18" deep. I was acquainted with the river in general around there while I was there. I was never around Copperhill very much but the river does get pretty high sometimes and I have seen it pretty high but at the time I got the auger out it wasn't so swift then, but just swift when the river is up. I have never served as a deputy sheriff before the time I was employed. I had been farming before that time. My duties as an officer there was guarding the Tennessee Copper Comany in company with other deputy sheriffs. My station was at

the pump house, there was nobody around there but me. There were several of us on duty, though, at various places around there. The picture I have filed as an exhibit shows just about the place where the auger was taken out of the river.

(Witness excused.)

The witness, R. T. MANN, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is R. T. Mann. I am a special agent for the Federal Bureau of Investigation and have been such agent since August, 1934. I am an attorney, graduated from the Law College of the University of Tennessee at Knoxville and have lived in the State of Tennessee at Knoxville, all my life. In the latter part of March or first of April, 1940, I was stationed at Knoxville and while stationed there I had occasion to investigate some dynamitings of the Tennessee Valley Authority at Fannin County, Georgia, and Polk County, Tennessee. In the course of that investigation I questioned Felton Woodward. I questioned him on three occasions and obtained a statement from him. I took an oral statement from him the night before he gave the written statement. That was on Sunday the 28th of April. Mr. Plaxico and Mr. Roche were present at that time and Ed Simonds and Earl Hubbard were also present. The other two defendants, Earl Hubbard and Ed Simonds, started talking when Felton Woodward came in the room and said they were implicated in the commission of these dynamitings jointly with the other two defendants. They did not deny any-

thing Felton Woodward said, as a matter of fact they admitted it and made statements in conformance with what had already been made by Ed Simonds who had already signed a confession that evening. The written statement of Felton Woodward was taken the following day. I have examined the paper you handed me and it is the statement I took from Felton Woodward. He signed it and signed it on each page. I will file this statement as Exhibit 1 to my testimony. At the time Felton Woodward made this statement he was advised of his rights, he was told he didn't have to make a statement and whatever he said would be used against him in court or could be used against him in court. The statement is as follows:

"I, Felton M. Woodward, wish to make the following voluntary statement to N. H. McCabe, E. M. Hevron and R. T. Mann, who are Special Agents of the Federal Bureau of Investigation, Department of Justice.

I make this statement without any threats or promises having been made me, and knowing it can be used in court against me. I am thirty-one years old and live at Copperhill, where I have a Post Office box, 273. I am married and have two young children. I have been working for the Tennessee Copper Company in the smelter department at Copperhill for ten years. On July 14, 1939, I went out on strike at this company and had affiliated with the CIO about three or four months before the strike was called.

On Sunday March 31, 1940, at about 2:00 P. M. I was at home and some one came there and told me that some one, who is the organizer for the CIO—"

Mr. Baker: We except to that, if the Court please—that is identifying or attempting to identify one of the other defendants.

The Court: Yes, sustain. Don't think that would give us any information at the present but it might later on. Just leave that out—"some one" or "some individual."

A. "Some other individual connected with the strike wanted me to come to his—this individual's office at Ducktown, Tennessee, which is four miles from Copperhill. This individual lived there, and also had his office in a house which is next door to the home of LeFever—"

Mr. Townsend: We object to that—don't think it will hurt anything other than it locates the office of the person he is talking about.

The Court: Well, let it go in. It is awkward to try to arrange it without getting that in. I can see your point, and I will instruct the jury about it more. So far as you can read the statement without giving their name.

A. All right, sir. "And is in the house right next door and east of this place. The person who came to my house didn't say what this individual who had his office in Ducktown wanted, or give me any other details. I got into my 1936 Ford sedan and drove to this individual's office in Ducktown. I now definitely recall after thinking it over that my young boy came to me while I was at a neighbor's house and told me that someone had sent for me, and told me that the individual, whose office was in Ducktown, wanted to see me. This person did not go with me and I drove alone. I went into this man's

office at Ducktown and he was alone, and told me to make arrangements to dynamite the Tennessee Valley Authority power lines which lead into Copperhill from Parksville, Tennessee, and from Blue Ridge, Georgia. By dynamiting both these lines, which was the sole course of electricity, this would cause the Copper Company to cease operations. I asked him if he had the powder and the stuff to do it with. He replied 'I have got powder.' At this time he didn't say where it was. I then left his office and got into my car and drove home. I saw an individual there, and as I wanted some one to go with me, I asked this individual to drive over to one of the striker's homes. I knew from previous talk with that individual, that is the striker, that he would do his part, and this is the reason I went to him."

Mr. Lipscomb: Have you the word "striker"

The Witness: No, sir.

Mr. Townsend: It isn't fair to say striker unless there is something that says that and from the statement we have there is nothing to indicate he is a striker.

The Court: It is an individual or person without any descriptive sort of word.

The Witness: Well, he more or less explained parenthetically his connection by his previous conversation with this individual, he knew he would cooperate, that is the reason I said striker.

Mr. Lipscomb: We object to that because that is saying something indirectly which the Court has requested him not to do.

The Court: Just say he was an individual.

The Witness: All right, sir.

"I knew from previous talks with this individual that he would do his part, and this is the reason I went to him. He lives in what is called Hell's Holler community near Copperhill, and I got, there about 6:00 o'clock that afternoon. I asked this individual if he wanted to get some power poles, and he said he was willing. I had called him out of the house, and he and I talked about this in his yard. Another individual was at this man's home at the time and I talked to him together, and he said he would do his part too—that is, the second individual that was at this house. These two men and another person who was in the car with me at the time I went over there to this house in Hell's Holler, got into my car and drove to another individual's home, which is about a quarter of a mile away."

The Witness: I want—

Mr. Badgett: Don't say anything about the next.

The Witness, I want to ask the Court a question. Your Honor, is it all right to make mention relationship of these individuals—that he bore a certain relationship to the other person?

The Court: I don't think that would be proper, that would be a method of identification, just say another individual or another person. I know it makes it hard for you to read, Mr. Mann, but that is the only way we can get it in and make it competent before the jury.

The Witness: Yes, sir.

"The first individual whom I contacted told me to drive by and pick up this last individual, but didn't say why, but I imagined he wanted to get him to help dy-

namite the lines. This last individual that was picked up got into the car and we drove across the Rogers Ferry Bridge on the way back to Copperhill. It was dark at this time, and was just getting dark when I had gone to the first individual's house—that is on the way over there. About two hundred yards across the bridge one of them said to stop so they could get out. Two of the individuals got out with another man who had gotten into the car when I picked up the last individual, but they didn't tell me who he was or anything about him. It was dark, and I saw this strange men well enough to know that he was a stranger to me, and that I never had seen him before. The first individual stayed in the car and we drove immediately to the individual's office in Ducktown. The party who was in the car with me and I went into the house and to the door of this office where another individual let us in. This other individual told me 'here this stuff is.' I asked him how much powder there was and he said twenty-five sticks of dynamite and four-hundred and fifty feet of fuse. The individual who met us at the door carried it to the door and got scared and turned it over to me and I took it to the car, which was parked in front of the house. The man whose office was—"

Mr. Townsend: Your Honor, I submit it is not necessary to say which man—

The Court: He said the man, didn't he?

Mr. Townsend: He said the man whose office—

Witness: "The individual was in his office. The individual was in his office, but I didn't have anything to say to him. When I first went into the office the individ-

ual was sitting at his desk alone and I told him that in order to blow up the wood poles which held the power lines on them it would be necessary to have a brace and bit. The individual said he had meant to get one a few days before and that he would have the other individual in the office to borrow or get one that night. Right after this the other individual came to the office door and had in his arms the dynamite. This individual told me he had been out looking for a brace and bit and that he believed he knew a fellow in Copperhill who had one. This individual told me that he would meet me at the branch right above the L & N Railroad depot and about half an hour. I took the individual who was in the car with me back to the vicinity of Rogers Ferry Bridge and let him out, and I gave him half of the dynamite and two hundred and fifty feet of fuse. I didn't see any other individual or the strange men around when we let this individual out, but I figured how we could get in touch with them in that vicinity in order that they could make arrangements to blow up the lines on the Parksville end. After I let this individual out, the other individual in the car with me and I returned, or turned around and drove to my house, and I told an individual to go up and get another individual who lives near there to come to my house. In a few minutes this individual, together with the other individual, came to the house. While the first individual had gone to get the second individual I went to a third individual's house near by and told him about our plans, and that I had the powder and fuse for the Blue Ridge end, and he said he would do his part.

He also told me he wished he had a little more time, and that the individual in Ducktown should have given him more time. I went back home and in a few minutes the third individual came there—"

Mr. Badgett: You can name him.

"Ed Simonds, the third individual, but when I got home the second individual and another individual were already there. When the first individual and I let a certain individual out and were on our way back home I stopped at the picket house near the L & N depot and talked to an individual there, who was on duty at the time. I asked him if I could find somebody else who would be willing to go with them and me over on the Blue Ridge side and blow up some power poles. He said he would do it, and I told him I would be back later that night and get him if I got some one else to go. I didn't tell him about who was on the Parksville end, but did say that that end would be taken care of.

The first individual and the other individual, together with Ed Simonds and I left to my house in the car and drove to where one of the individuals from Ducktown was to meet us, but as it was so much later than we had expected that individual was not there, and we drove by the picket house and picked up an individual and let the first individual out of the car to take that individual's place. I knew that the individual had said he had a brace and bit, so then we drove to his place, and Ed Simonds and another individual went to this individual's house and got the bit, which was a large one, with wooden handle. I didn't see the individual at

the house as another individual and I waited in the car. I then drove to the vicinity of Jim Allen's near McKaysville, Georgia, and let the individual, together with Ed Simonds and another individual, out of the car, and at this time Ed Simonds took the rest of the dynamite and fuse. I drove home and went to bed and it was about 11:30 P. M.

As I recall the fuse was in a paper bag or box and the dynamite was in with it. I don't know whereabouts the dynamite and fuse was bought or how the individual —or how the individuals got it."

Mr. Badgett: Don't say the next one.

The Court: How is that?

Mr. Badgett: Your Honor has already ruled on the next part of it, so I told him not to read that—it is about the description of a house.

The Court: Yes. That a whole paragraph?

Mr. Badgett: Five lines.

The Court: All right, skip that.

"About four of five days before the first dynamiting, which was on March 31, 1940, Sunday, I was at the union hall at Copperhill, and it was about noon. The individual in Ducktown called me on the phone and told me he wanted me to come over to Ducktown to his office, but didn't say what the nature of the trip was. Another individual and the second individual were in the hall at the time and I told them I was going to Ducktown and asked them if they wanted to go for a ride, and they waited in the car while I went into the office. This individual at the time—well, here is some—"

Mr. Badgett: Some more description of a house.

The Court: Leave it out.

"When I walked into the office I didn't see any one but from this individual's office I walked into his bed room, which adjoins his office, and in his bed room I saw certain individuals. When I went into the office I do recall an individual was there and spoke to me and told me to go on into the bed room where the other men were, and he did not say why he had called me there. He came into the bed room right after I did, and every one there was talking about different ways they could use to stop the Copper Company from operating, and mention was made about dynamiting the power lines from Parksville to Blue Ridge.

I entered into the discussion and I said in my opinion that dynamiting the lines was the surest way of stopping operations. This individual also remarked that he thought other means should also be used against the Company to stop operations in addition to dynamiting the power lines. He told all of us he would make arrangements to get the powder and fuse but didn't say where or when he would get it. The meeting lasted an hour or longer. After the meeting I took the two individuals home, as they live near me. I didn't tell them what went on in the meeting. In a day or so an individual—"

Mr. Badgett: You can say that.

"A striker came by the Union Hall—"

Mr. Lipscomb: Wait a minute, our record don't show that as being striker—

The Witness: In the statement it is though.

Mr. Badgett: You want to examine the statement, it is in the statement.

Mr. Lipscomb: All right.

A. "—came by the union hall in Copperhill in the morning and suggested I get up a group of men and blow the line down and remarked 'tonight will be a good one.' He was not at the meeting and I don't know how he figured I knew anything. It was the next day that I dropped into the individual's office in Ducktown, and he was not there, but another individual was and that individual told me that the other individual had said he didn't think it was a good idea to dynamite the power line as they belonged to the United States Government. I told this individual that the other individual had just told me he agreed on this plan. The day after this I dropped into the individual's office, and he was there and I told him what the other individual had told me concerning the power lines, and this individual said he thought it was the thing to do, meaning that he thought we should dynamite the lines.

Several days before the second dynamiting, which was on Sunday, April 14, 1940, we had another meeting, and—in Duck'own, and those present were so and so. This was in the afternoon and an individual told me at the union hall in Copperhill that an individual called for me to see him. When I got there the other men were already there, and an individual told me in the presence of the others that he wanted 'the lights put out again so the men can gc into the mine' meaning that

he wanted some of the men to go into the mines and do some damage.

About a week after the first dynamiting I was in the individual's office talking to an individual who told me there was a case of powder in Chattanooga, but there was no way of going after it. He didn't say who took it to Chattanooga and I figured that an individual had told him about it. He asked me if I would drive over and get it and I told him I didn't want to as it was too dangerous. He also asked me if I thought he could get an individual to get it, and I told him I didn't imagine so.

About this time the individual came in and I told him the tires on my Ford were bad. He then told me he had a case of dynamite in Chattanooga and hinted for me to go after it, and I told him if he could not get anybody else to I would. He said if I would when I came back from Chattanooga to come by way of Dalton, Georgia, and Cleveland, Tennessee. I told him I would go but that this would be the last time I would, as I figured that this would get somebody in the penitentiary. He then gave me $10 to make the trip on. This was in the morning, and he said he was going to Chattanooga later in the day and he said to meet him in the Key Hotel and to call at the desk and ask for him—"

Mr. Townsend: Now, if the Court please, we don't think it is fair to say where he was to meet him. That is a way of identifying the individual. This man might meet anybody at the Key Hotel, and the jury might infer that was the person he was supposed to meet.

The Court: The jury, of course, is instructed not to infer anything about anybody except this man who is

The witness, J. E. LUNSFORD, having been duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

I took the statement from Robert Lee Rhodes on April 29, 1940. I told Mr. Rhodes before he gave the statement that he didn't have to make it unless he wanted to and that we could not promise him anything and we didn't threaten him in any manner. We identified ourselves and told him that any statement he made could be used against him. He wanted to make a statement. At the time he made the statement Agent C. A. Whitten and I were with him. Neither Mr. Whitten nor I, nor anybody else threatened or promised him anything in consideration of this statement.

At this point counsel for the defense entered an exception to the admission and reading of the statement, which was overruled by the Court.

The statement is as follows:

"Copperhill, Tennessee, April 29, 1940.

"I, Robert Lee Rhodes, make the following voluntary statement to Special Agents C. A. Whitten and J. E. Lunsford of the Federal Bureau of Investigation, United States Department of Justice. I have not received any threats or promises, and I know this statement may be used against me in court. I am 40 years of age, married and have six children, whose ages are 17, 12, 8, 7, 4, 3 and a baby one year old. Since 1927 I have worked as a lead burner's helper in the acid plant of the Tennessee Copper Company. I have been a member of the CIO for

several years, and went out on strike with the CIO on July 14, 1939. During the latter part of March, 1940, an individual came over to my house on Cemetery Hill, Copperhill, Tennessee, and told me his brother, another individual, wanted to see me. I immediately walked over to this individual's house and saw the individual and another individual. Felt—an individual asked me if I would get the plant down and said they wanted to dynamite some power towers which supplied the Tennessee Copper Company with power. I told the individual I would help him dynamite the towers, and then we drove off in the individual's car with another individual. We drove back to Barnes Chapel near Gravel Gap and parked for a short time while two other individuals went somewhere and returned with an auger. We had picked up another individual at the picket line in Ducktown. When we first left the individual's house I noticed some dynamite and fuse on the floor of the individual's car. After two individuals returned with the auger we drove back towards Copperhill to about a mile out of town, where we turned off on a dirt road, and drove about a half a mile where two individuals and I got out of the car and the other individual drove away. We walked down the ridge until we came to the power line known as the Blue Ridge line. I think I carried the auger and the other two men carried the dynamite and fuse. When we came to a power tower it was about midnight of March 31, 1940, on Sunday. Two individuals and I used the auger to bore holes in the wooden tower to hold the dynamite. An individual told us where to bore the holes. This individual also put the dynamite in the holes we had bored and fixed

the fuse in both legs of the tower and lit a fuse which was about twenty or thirty feet long. After lighting the fuse we three walked down the railroad and got to the Copperhill High School before we heard the explosion blowing up the tower we had planted the dynamite in. When the blast went off one of the individuals said, "we are away late." I figured he meant our blast was arranged to go off about the same time as the one on the Parksville line where a power tower was blown up just a little while before the one we dynamited. Several days after this dynamiting I told an individual I was through helping dynamite power lines. Since that time I have not had anything further to do with dynamiting, and am sorry, very sorry, I was led off that night when I helped them.

I have read the foregoing statement of one and a half pages and it is true.

(Signed) Robert Lee Rhodes."

The statement was then filed as an Exhibit to the testimony of this witness and ordered copied into the record as read.

I also took a statement from Robert Lee Ballew. I took that statement on May 1, 1940. Before he made the statement he was advised of his rights and was apprised that no threats or promises could be made. We identified ourselves to him and told him the statement could be used against him in court and told him he didn't have to make a statement unless he wanted to and I nor any other agent threatened him in any way, in fact he was very anxious to give us the statement. We didn't make

him any promises of any kind: The statement is as follows:

"Chattanooga, Tennessee, May 1, 1940.

"I, Robert Lee Ballew, without having received any threats or promises, make the following voluntary statement to Special Agents C. A. Whitten and John E. Lunsford, Federal Bureau of Investigation, United States Department of Justice, knowing that it may be used against me in a Court of Law.

I am thirty-two years old, married and have two daughters. I have been working for the Tennessee Copper Company and its predecessors for the past ten years until I went out on strike July 14, 1939, with the CIO. Sunday evening April 21, 1940, I was at the picket line at the Tennessee Copper Company at Isabella, Tennessee, when Earl Hubbard came to me and told me he wanted me to do a little scouting job. This individual meant to be at another individual's house that following Monday night—"

Mr. Townsend: The Court please, we object to that unless Earl Hubbard was present at the time. His name was called.

The Court: Let it be stricken. I think that was a slip of the tongue.

The Witness: Yes, sir, I apologize to the Court.

The Court: That is stricken.

The Witness: "This individual told me to be at another individual's house on the following Monday night. I walked from my house in Isabella to the other individual's house on Monday, April 22, 1940, and arrived about

8:30 at night. An individual was there when I arrived, and also another individual. An additional individual arrived at about 9:00 that night. After that particular individual arrived we waited about an hour. Another individual came to the house of another individual already named. We left the individual's house about 10:00 that night. Another individual and I had two tow sacks and we put one hundred and one sticks of dynamite in the sacks, which we found by the side of one of the individual's garage. Also we picked up about fifty feet of fuse, which was with the dynamite. Two individuals each had a shot gun. We four walked over in the woods between Wolf Creek and Hot House Creek, about half way between the mouths of each creek where we spent Monday night; we spent Tuesday, April 23rd, in the woods pretty close to where we spent the night. The place where we stayed was just across the hill from the Blue Ridge power line. Tuesday night, April 23, 1940, three individuals and I walked over to the first power tower, which was made of steel, and an individual and I put about twenty-five sticks of dynamite on the inside corner of each of the four concrete posts, and set the fuse which an individual had, with a cigarette lighter and the three fuses were hooked to the four posts, and an individual lit the fourth fuse. Two individuals stood guard while we worked. It was about one o'clock in the morning on Wednesday that the dynamite went off. We were about 200 yards away when the explosion occurred. We all four walked back to an individual's house and got there about daylight. We had breakfast there, and after staying there for awhile I walked on to an individual's house Wednesday morning. Two

other individuals took another individual's breakfast to him out in the woods. This individual gave out walking back to another individual's house—it was about twelve miles from the individual's house to where we dynamited the power tower.

This is all I know about the dynamiting and the only thing I took part in. I never attended any meetings of the CIO, or any other form of meeting where dynamite was discussed.

I have read the above statement and it is true.

(Signed) Robert Lee Ballew."

Counsel for the defense thereupon excepted to the introduction and reading of the statement, which exception was overruled by the Court and exception taken to the Court's ruling.

The statement was then filed as an Exhibit to the testimony of this witness and ordered copied into the record as read.

I was present when Earl Hubbard's statement was given, Agent Whitten and I took it. Before we took the statement from Earl Hubbard he was told the statement could be used against him in court and we identified ourselves and told him he didn't have to make a statement unless he wanted to. He had not previously made a verbal statement to me but I understand he had to some of the other agents.

Cross Examination by Mr. Baker.

X. Where was Robert Lee Ballew when that statement was taken, Mr. Lunsford? A. Here in this Federal Building.

X. Here in the Federal Building? A. Yes, sir.

X. In your office down here by the Marshal's office? A. No, sir, I think it was taken in a witness room right across the hall.

X. Did you arrest Robert Lee Ballew? A. No, sir.

X. You know who did? A. No, sir.

X. Where did you find him when you wanted to talk to him? A. I found him, I believe at Edna Carter's house.

X. You found him at Edna Carter's house? A. Yes, sir, when I first saw him.

X. Well, did you take him into custody then? A. No, sir.

X. You know who did take him in custody? A. No, sir.

X. When was it you saw him at Edna Carter's house? A. April 30th.

X. Well, did you leave him there? A. No, sir.

X. What did you do with him? A. He came to Copperhill.

X. How did he come to Copperhill? A. Came with me and Agent Whitten and another individual.

X. You did arrest him then and brought him to Copperhill? A. No, sir, I did not.

X. Well, he came in your car, didn't he? A. Yes, sir.

X. And you told him to get in the car, you or Whitten one? A. I asked him if he would voluntarily accompany us into Copperhill, and he said he would.

X. If he would voluntarily accompany you into Copperhill? A. Yes, sir.

X. You knew you were in North Carolina? A. No, sir.

X. You didn't know you were in North Carolina? A. No, sir.

X. What did you do with him when you got to Copperhill? A. I talked with him for about thirty minutes.

X. Well, did you put him in jail then? A. No, sir.

X. Who did you turn him over to? A. I don't remember turning him over to anybody.

X. Well, what did you do with him when you got to Copperhill? A. I talked with him about thirty minutes.

X. After you got through talking with him where did he go? A. I don't know.

X. Where was he when you talked to him? A. In the YMCA.

X. Did you take him to the YMCA? A. I didn't take him any place—he just came along with us.

X. When you got to the YMCA your car stopped in front of it—did he get out and walk into the YMCA himself? A. Yes, sir.

X. And you were right along with him? A. Yes, sir.

X. You and Agent Whitten? A. Yes, sir.

X. You took him in a room then and talked to him? A. Yes, we talked in a room.

X. You took him in there for the purpose of talking to him? A. I didn't take him—he just came along voluntarily.

X. Who opened the door for him to get in? A. I don't know, it may have been already open.

X. How did you get out of the building when you got ready to leave? A. Walked out.

X. Well, did you leave Robert Lee Ballew in custody of anybody? A. No, sir.

X. Did you invite him to leave with you? A. No, sir.

X. What was he supposed to do—was he in jail or was he not in jail—was he under arrest or not? A. No, sir.

X. He had a right to leave the YMCA then any time he wanted to? A. Absolutely—he didn't even have to come if he didn't want to.

X. Now, you say you didn't know it was North Carolina where you got him? A. That is right.

X. You mean you didn't see a big sign along the highway where it says "North Carolina"? A. No, sir, that is tri-state area in there—three states run together.

X. Do you know whether you were in North Carolina or not? A. No, sir.

X. There was not any sign on the highway at the state line? A. Not to my knowledge.

X. Who told you to go over there and pick up this man—Plaxico? A. Nobody told me to pick him up.

X. Well, who told you to go over there to Edna Carter's and invite him to come to Copperhill with you? A. Nobody. Mr. Plaxico told me to interview him.

X. And to invite him to come to Copperhill to be interviewed? A. No, sir, didn't say that.

X. Well, did he tell you to bring him to Copperhill? A. No, sir.

X. What did he tell you to do? A. Said try to find him and talk with him.

X. He didn't say arrest him? A. Nothing was said about any arrest.

X. When you got through with him why didn't you take him back to where you got him in North Carolina? A. My impression is he didn't want to go.

X. Oh, he wanted to stay in the YMCA? A. I don't know what he wanted to do.

X. Well, he didn't want to go back home, he wanted to get in jail?

Mr. Frazier: That a statement or a question?

X. I am asking you if he wanted to get in jail? A. He didn't say anything to me, no, sir.

X. Did he ask you to bring him to Chattanooga with you? A. No, sir.

X. Did you invite him to come down here with you? A. No, sir.

X. Did he get down here in jail on invitation also, his invitation? A. I don't know how he got down here.

X. Your testimony to this jury is that Robert Lee Ballew invited himself into this jail? A. That is your construction, not mine.

X. That is not your construction of it. Where was David Queen when you talked to him? A. I don't remember talking to Queen.

X. You didn't talk to Queen? A. No, sir.

X. How about Rhodes, where was he when you talked to him? A. YMCA.

X. When did you first talk to him? A. On the day he gave the statement.

X. That was the only time you ever talked to Rhodes? A. Only time I recall, yes, sir.

X. What date was that? A. April 29th.

X. On Monday. How did you know he was in the YMCA? A. I didn't know where he was.

X. How is that? A. I didn't know where he was.

X. Where did you talk to him? A. In the YMCA.

X. How, do you know how he got there? A. No, sir, I don't.

X. Did anybody tell you to go over there you would find him over there? A. No, sir.

X. How did you know where he was when you got over there? A. I don't remember—he came in probably, Mr. Plaxico just told me to talk with him.

X. Plaxico told you to go talk to Robert Lee Rhodes, that correct? A. Yes, sir.

X. And you found him in the YMCA? A. Yes, sir.

X. Was that where Mr. Plaxico told you you would find him? A. He didn't say.

X. You didn't know where you were going to find him—were just instructed to go talk to Robert Lee Rhodes? A. That is right.

(This witness was then excused.)

The witness, C. A. WHITTEN, having been duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

I witnessed the signed confessions of defendants Robert Lee Rhodes, Earl Hubbard and Robert Lee Ballew I saw Earl Hubbard sign the statement. At the time he signed the statement he was told that any statement he

might make would have to be voluntary and he didn't have to make a statement and the statement could be used in evidence in any court of competent jurisdiction. He signed the statement on each page. The paper which you have just handed me is the statement of Robert Lee Rhodes. He signed it in my presence. He was also advised of his rights and signed on each page. The paper you have just handed me is the statement of Robert Lee Ballew. This statement was taken here in Chattanooga. Every one of these men were warned about their rights before the statement was taken.

Cross Examination by Mr. Baker.

X. Mr. Whitten, you went over in North Carolina with Mr. Lunsford to get Robert Lee Ballew, did you not? A. I went over with Mr. Lunsford and a deputy sheriff.

X. In North Carolina? A. I don't know whether it was in North Carolina or not.

X. Didn't you see the sign where you crossed the state line? A. No, sir.

X. Where did you find him, Mr. Whitten? A. He was at his aunt's home, I believe—I believe his aunt's, or some relative. I think her name was Mrs. Carter.

X. You recall what deputy sheriff was with you? A. I think his first name was Clyde, I am not sure about his last name—great big—

X. You think it was Clyde Dale? A. I think it was.

X. Or was it Rhodes? A. I couldn't be positive which.

X. You went over to this place and arrested Robert Lee Ballew? A. No, sir.

X. Well, did you pick him up there? A. Mr. Lunsford went in and inquired for him, and the first time I saw him he walked out the door with Mr. Lunsford, came and got in the car with us and we started talking to him about the case, and suggested that it would be better if he wanted to cooperate with us and tell us what he knew about it—he said he would be glad to—it would be better if we got somewhere and sat down and talked and he agreed to go with us to the YMCA at Copperhill. He was told he didn't have to go—if he went it would have to be on his own volition.

X. You didn't have a warrant? A. No, sir, didn't put him under arrest, or tell him he was under arrest. Told him we would leave him there—he didn't have to go unless he wanted to.

X. Did you search him? A. No, sir.

X. I will ask you if somebody didn't take his knife off of him? A. Not that I know of.

X. You didn't see anybody do that? A. I don't remember seeing anybody search him at all. Nobody searched him in my presence.

X. Who was driving the car? A. I believe the deputy sheriff was driving the car.

X. Where did Ballew get in the car—what part, front or back? A. Well, I don't exactly remember. I believe he rode with me, the best I can remember.

X. Between you and Mr. Lunsford? A. I think Mr. Lunsford rode in the front with the deputy.

X. And he rode in the back with you? A. According to my best memory he did.

X. And you went straight from there to the YMCA? A. Yes, sir.

X. Did you tell him you were going to the YMCA when you left with him? A. I don't know whether we told him that or not until we got to Copperhill.

X. You just told him you were going to Copperhill and wanted him to go along with you? A. I don't know whether we mentioned the YMCA or not. We wanted to go, wanted him to go if he was willing to go—it was entirely up to him.

X. And you did take him to the YMCA? A. Yes, I believe we went to the YMCA.

X. And had him put in jail? A. No, sir.

X. Well, you know he was put in jail? A. He could have been put in jail after I left—he was not in my presence. We left him at the YMCA.

X. Well, was he in the custody of anybody? A. Not that I know of.

X. Wasn't any deputy sheriff around? A. Oh, there may have been.

X. All he had to do was get up and walk out? A. As far as I was concerned.

X. As far as you were concerned? A. Yes, sir.

X. And that was on or about the first day of May? A. 30th, I believe, of April.

X. How long did you talk to him at the YMCA? A. Oh, we talked to him an hour maybe, more or less, maybe less.

X. In the morning or afternoon? A. I think it was late afternoon, the best I can remember.

X. Wasn't any one present besides you and Mr. Lunsford and Ballew? A. Well, a deputy sheriff was present on our way up there.

X. I mean at the YMCA while you were questioning him there, was anybody else there? A. I don't remember anybody but Lunsford.

Re-Direct Examination by Mr. Badgett.

RQ. Mr. Whitten, why didn't you take him back home? A. I believe he indicated he didn't care to go back home. I don't know whether I did or not, some of us told him the Sheriff wanted to see him. He expressed himself as willing to see the Sheriff.

RQ. You told him before he got in the car he didn't have to go? A. Yes, sir, and told him I wanted it thoroughly understood he didn't have to go—if he went it would have to be on his own accord. All three of us were present.

RQ. Your jurisdiction does not cease at the state line, does it? A. No, sir, I don't know whether it was in Tennessee, Georgia or North Carolina.

RQ. Well, you have jurisdiction—

Mr. Townsend: What his jurisdiction is is a question of law.

The Court: Yes, that is true.

Re-Cross Examination by Mr. Baker.

RX. You know you have no right to transport a man across a state line without a removal order from the District Judge? A. I know it is not customary to transport a man across if he is under arrest.

RX. You know if you arrest a man in one state you have to take him before the District Judge and get a re-

moval order to take him across the line? A. If he is arrested—unless he signs a waiver.

RX. Robert Lee Ballew didn't sign a waiver did he? A. He didn't sign a waiver because he was not under arrest, and he was specifically told he was not under arrest.

RX. Did you invite him to come to Chattanooga? A. The fact is we offered to bring him back home if he wanted to go.

RX. You say you did offer to bring him back home? A. Yes, sir, if he wanted to.

RX. Who was present when you offered to take him back home? A. I believe all three.

Re-Re-Direct Examination by Mr. Badgett.

RRQ. You made that offer yourself didn't you? A. I might have, I don't remember who did.

(This witness was then excused.)

The witness, SHERIFF B. E. BIGGS, JR., being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

Q. State your name please, to the Court and jury? A. B. E. Biggs, Jr.

Q. Mr. Biggs, do you hold an official position of any kind? A. Yes, sir.

Q. What position? A. Sheriff of Polk County.

Q. How long have you been Sheriff of Polk County? A. I am serving my third term.

Q On your sixth year? A. Yes, sir.

Q. Sheriff, you remember the occasion when there was some dynamiting of TVA power lines over in your County and Fannin County, Georgia? A. Yes, sir.

Q. When was that? A. Well, I don't recall just the exact date—back in early spring, around April or May.

Q. As a result of that, Sheriff Biggs, did you make an investigation? A. I did.

Q. As Chief Peace Officer did you make any investigation? A. Yes, sir.

Q. As a result of that investigation did you arrest anybody? A. Quite a few of them.

Q. How many of these defendants on trial did you arrest? A. I think twenty-one.

Q. You arrested all of them that are on trial? A. Yes, sir.

Q. You remember when the FBI came in? A. Yes, sir.

Q. And you had a conference with the FBI, did you not? A. I did.

Q. You don't know whether the FBI had a conference first? A. How is that?

Q. You know whether the FBI had an organization meeting at which you were not present? A. They had personal meetings at which I was not present.

Q. But they did contact you about the situation? A. They did.

Q. And these men who were arrested by you, were they arrested on State charges? A. They were.

Q. And where were they placed? A. Well, they were taken to the YMCA building; that was used as my headquarters in Copperhill at that time.

Q. Is that a jail, Sheriff? A. No, sir, is not.

Q. Is that used by you as an office? A. My office was in the YMCA building.

Q. How long was it your office? A. About eleven months.

Q. Your office is in Benton, is it not? A. My office is at the court house in Benton, but during this trouble at Copperhill I had my office at the YMCA building at Copperhill.

Q. And these men stayed there? A. Yes, sir.

Q. You know the kind of treatment they received there? A. Yes.

Q. I want you to tell the Court and jury about it? A. They were treated very courteously—just as nice as anybody could have been.

Q. What kind of food did they eat, Sheriff? A. Just what I ate.

Q. The same as you and your men? A. Yes, sir.

Q. You have your cook here this morning, do you, that cooked for both of you? A. Yes, sir.

Q. Cooked for your men and these defendants? A. Cooked for me and my men and all these defendants.

Q. Where was all the food prepared? A. In the YMCA at Copperhill.

Q. Was any food prepared at the jail there in Copperhill? A. No, sir.

Q. Was all of it prepared at the YMCA by this cook? A. Yes, sir.

Q. Sheriff, did you ever lay a hand on any of these defendants in a threatening way or intimidate them? A. I have never struck a man since I have been in office.

Q. Did you ever use any threats against them or promise them anything? A. I certainly didn't.

Q. Any of your men— A. No, sir.

Q. That you know of? A. No, sir.

Q. I want you to tell particularly, Sheriff Biggs, the facts about the arrest of Ed Simonds, Earl Hubbard, Felton Woodward, John David Queen, Ballew and Rhodes —were all those men arrested on State charges? A. Yes, sir.

Q. Just tell the facts about it? A. I had information that a felony had been committed in my county and I sent my officers out to bring these men to the YMCA at Copperhill.

Q. Who ordered you to arrest them? A. Nobody, I ordered their arrest myself.

Q. As sheriff of your county? A. That is right.

Q. Did you, Mr. Biggs, or anybody else in your presence ever make any threats or promise against these particular men—the ones I have just mentioned? A. No sir, there were no threats made or any promises made.

Q. Did you ever withhold food from them or knock a cigarette out of their hand? A. Never.

Q. Did you deny to them the use of tobacco? A. Never.

The Court: Sheriff, you know how many different occasions of dynamiting of towers and poles there were?

The Witness: Yes sir.

The Court: How many were there?

The Witness: Towers and poles, three different occasions, but six different explosions. The towers were dynamited on the Tennessee side in my County—Polk

County, three different times, and they were dynamited on the Georgia side, the Blue Ridge end, three different times.

Mr. Badgett: Just two poles each time on each side?

A. No, when the wooden poles were dynamited there were two poles each time, but on the steel towers there was only one dynamiting each time.

Q. One on each side? A. On each side. Electricity comes in from the Parksville Dam from Polk County, and from the Blue Ridge Dam from Georgia, and there would be an explosion on each end to cut off all of the entire electricity which came into the Copper Basin.

Q. In other words, if one explosion took place they would switch— A. When an explosion would go off in Georgia, it was an automatic switch, and came in from the Parksville end. There would be a flicker of lights when the explosion would happen on one end of the switch to affect the source of electricity, and when an explosion would occur on the other end all lights would go out in the Basin.

Cross Examination by Mr. Baker.

X. You are chief law enforcement officer of Polk County, are you not? A. I am.

X. Your duty is to investigate the violation of the law up there? A. Yes, sir.

X. Now, the first explosion happened in Polk County on or about March 31st, or April 1st, did it not? A. I am not positive about it—somewhere around that time, yes, sir.

X. And you were interested in apprehending and prosecuting the guilty parties, were you not? A. I was.

X. You wanted to investigate it? A. Yes, sir.

X. Then there was another explosion on April 14th, and as such chief law enforcement officer you were interested in investigating and prosecuting them? A. I was.

X. You wanted to see the guilty parties apprehended? A. I certainly did.

X. Then there was another one on the 23rd in Polk County, and you still wanted to find the guilty parties? A. Yes, sir.

X. Wanted them prosecuted? A. Yes, sir.

X. Sheriff, you were so interested in having them prosecuted you never went to the scene of where any of these explosions happened until after the FBI came up there? A. That is not true.

X. Did you go to the place where the wood poles were blown before Mr. Roche got there? A. No, sir.

X. Did you go the place on the Parksville end on the 14th of April, before Mr. Roche got there? A. I did.

X. When? A. The night it occurred.

X. I will ask you if you didn't drive your car right by the place of the explosion, within seventy-five or a hundred feet, and didn't stop and go to where it was? A. That is exactly right.

X. You were in Knoxville at the time? A. I was.

X. And your Chief Deputy called you and told you there had been an explosion? A. That is right.

X. And in order to get from Knoxville back to Copperhill you had to drive right by the scene of this explosion? A. I drove by where it was but didn't know where it was.

X. Well, you saw the men working on the line? A. No, sir.

X. That was on the 14th or 13th? A. Well, approximately that time, yes sir.

X. Anyway, you didn't stop? A. Not at that time, no, sir.

X. And you didn't go back the next day? A. I went back that night.

X. You went to the scene of the explosion? A. I did.

X. Did you get out and go to the place where the tower was blown up? A. Well, it was right at the road, I would say within seventy-five feet of the highway.

X. Well, you investigated it out of your car, looking across from the highway, didn't you? A. I did not.

X. Well, what investigation did you make on the night of the 14th? A. I saw where it was, and the men had all gone at that time except possibly one or two men.

X. Well, did you get out of your car and go over to where the tower was blown up? A. I did.

X. Went right up to it? A. Yes, sir.

X. Find any fuse there? A. Plenty of it.

X. Did you pick any of it up? A. Yes, sir.

X. You did. What did you do with it? A. I took it back to Copperhill with me.

X. But you never went to the place where the wooden tower was blown up on the 31st, until after Roche got there? A. I was in bed sick at the time that happened.

X. Did you ever go to the place where the tower was blown up on the 23rd? A. No, I didn't go there.

X. Never been to that place yet, have you? A. A. No, sir.

X. Who was with you on the 14th or 15th when you went to where that tower was blown on the Parksville end? A. I don't recall now. I went in the Basin and contacted my Chief Deputy to find out about the explosion, and I worked with quite a number of my officers, and I don't recall just who was with me.

X. Now, you say, Sheriff, you arrested some of these defendants here because you had information they had committed a felony, that right? A. That is right.

X. Have any warrant for any of them? A. No, sir, I did not. I did for possibly one or two.

X. Well, specifically did you have a warrant for Earl Hubbard? A. No, I did not.

X. Did you have a warrant for Ed Simonds? A. I did not.

X. Did you have a warrant for Felton Woodward? A. I did not.

X. Did you have a warrant for Robert Lee Ballew? A. I did not.

X. David Queen? A. No, sir.

X. Robert Lee Rhodes? A. No, sir.

X. Leslie Bryant Green—Tate Green? A. I am not sure about that. I think warrants were issued for the men that was out of the State.

X. Clyde Huffman, Clint Huffman— A. Yes, sir.

X. John McGhee? A. No, sir.

X. No warrant for him? A. No, sir.

X. Marion Ellis? A. I am not positive about that. Marion Ellis was arrested by me and prosecuted in the

State Court for participating in dynamiting, and bound to the Court.

X. Ben Cross? A. I don't recall whether there was a warrant issued for him or not.

X. Martin Simonds? A. I don't think so.

X. Wayne Henry? A. No, sir.

X. Meegs Collins? A. No, sir.

X. Rans Smith? A. No, sir.

X. Theodore Woodward? A. No, sir.

X. In other words, you had substantially no warrants for any of these men, that is true, isn't it? A. I didn't understand.

X. I say substantially you didn't have warrants for anybody? A. Yes, sir, warrants were issued for some of them.

X. And you took these men to the YMCA? A. Yes, sir.

X. Now, you are telling this jury that those men slept and stayed in the YMCA? A. I am.

X. That they never got out of it after they got there? A. I couldn't say about all of them—there was possibly two or three stayed down in jail.

X. City jail? A. Yes, sir.

X. Well, specifically did Earl Hubbard stay at the YMCA? A. He did.

X. At all times? A. No, sir. I think he requested to be placed with Ed Simonds and Felton Woodward one night to go over their confessions, and wanted to talk with them and he spent a night in the city jail at Copperhill, but with that exception I think he was in the YMCA.

X. Where did Ed Simonds stay? A. Ed Simonds stayed at the YMCA, and possibly in the city jail some—I am not positive just how long he stayed at either place.

X. Where did Felton Woodward stay? A. At both places.

X. Both places? A. Yes, sir.

X. You also have what is known as the County Building at Copperhill, do you not? A. Yes, sir.

X. Have a jail there? A. Yes, sir.

X. Any of them stay in it? A. Yes, sir.

X. Which ones stayed in the County jail? A. I am not positive about that—I think possibly one of the Huffman boys, and I just don't recall who else.

X. Now, sheriff, taking Earl Hubbard and Felton Woodward and Ed Simonds, you said you arrested them without a warrant, did you not? A. I had a mittimus before I put them in jail.

X. Who from? A. Squire A. L. Dalton.

X. Did you take out a warrant when you got there? A. No, sir.

X. How did you get a mittimus without a charge? A. I did.

X. You got a mittimus without any charge pending against the men and put them in jail—you say that was from Squire Dalton? A. A. L. Dalton.

X. What did the mittimus charge them with when you put them in jail—what did you hold them for? A. Mr. Baker, I had very much of an emergency down there at that time. All these shootings into homes with high powered rifles, and dynamiting—throwing dynamite in-

to homes, and people over there, and killing—shooting cows, and kidnapping folks and taking them out and beating them up, and felonious assault cases. I had a job on my hands and I couldn't attend to everything at one time.

X. Well, did Squire Dalton give you a book of blank mittimusses so you could put people in jail? A. Why, certainly not.

X. Did you ever take out a State warrant for these three men, Felton Woodward, Earl Hubbard and Ed Simonds? A. I don't think so.

X. You don't think you ever took out a State warrant for them? A. That is right.

X. And yet you had mittimusses for them and put them in jail all the time? A. I did.

X. What did the mittimus say you were holding them in jail for, Sheriff? A. I think I requested a mittimus to hold them for investigation.

X. You say the mittimus called for you to hold them for investigation? A. Yes, sir.

X. You knew, Sheriff, you were not allowed to hold them on a warrant or anything else more than seventy-two hours? A. I did.

X. You held them longer than that? A. I don't think so.

X. You arrested Earl Hubbard on Wednesday didn't you? A. I don't recall.

X. You arrested Ed Simonds on Wednesday, and you arrested Felton Woodward on Wednesday? A. I don't recall just what time they were arrested.

X. And you know, Sheriff, they were never taken before a Justice of the Peace and had no hearing of any

kind at any time? A. They didn't have any preliminary hearing, no sir.

X. And there was never any warrant pending against them? A. You don't have to have a warrant, Mr. Baker, to arrest a man for committing a felony in a State court.

X. You arrested them for investigation—that is what you had them charged with, investigation? A. I arrested them for committing a felony, and I secured a mittimus to hold for investigation.

X. Well, do you know when the complaint was taken out by the Government in these cases? A. I don't recall just when.

X. You know it was on the 29th, don't you, the following Monday? A. I don't know that.

X. Well, if it was on the 29th, that would be six days from the time you put these three particular men in jail, wouldn't it? A. I don't know what day they were put in jail.

X. At any event they never had any hearing before anybody? A. They didn't have a preliminary hearing, no, sir.

X. Now, when did you establish your headquarters at the YMCA? A. I don't exactly recall the date, somewhere around the—I think the 23rd of August.

X. 1939? A. Yes, sir.

X. That was when the Copper Company had decided to reopen after the strike started; that is correct isn't it? A. No, sir, they had notified their men to report back to work on the 28th of August.

X. On the 28th, and that notice had been sent out when you established your headquarters at Copperhill? A. Yes, sir.

X. And you established your headquarters there for the purpose of protecting the Copper Company? A. I did not.

X. And for the purpose of having men available there to take care of the situation? A. I established headquarters there to be able to enforce the law and keep out any trouble.

X. And the first thing you did was to put on about a hundred and fifty or two hundred special deputies was it not? A. I put on a number of special deputies.

X. Can you give the highest number you had?

Mr. Frazier: Now, if your Honor please, I object to that.

The Court: Sustain the objection. I can't see where that is competent here, except it might reflect on the credibility of these confessions, but I don't think we should have too much detail.

Mr. Baker: The Court please, we think it shows the entire situation, and think we ought to be allowed to go into it.

The Court: I don't think so. The investigation was regarding conspiracy to destroy Government property.

Mr. Baker: All right.

X. Mr. Biggs, that YMCA where you established your headquarters belonged to the Copper Company didn't it?

Mr. Badgett: Your Honor, that is the same thing.

The Court: What was the question?

Mr. Baker: I asked if the YMCA didn't belong to the Copper Company?

The Court: Well, let him answer that.

A. I cannot say definitely—my understanding is that it does.

X. That it does belong to the Copper Company? A. Yes, sir.

X. You didn't pay any rent on it while you used it for your headquarters? A. No, sir.

X. And you quartered your men there? A. I did part of them.

X. When you arrested these men then the first place you took them was to the YMCA? A. Yes, sir.

X. And kept them there in the Copper Company's building? A. How is that?

X. And kept them confined in the Copper Company's building? A. I didn't understand that.

X. I said you kept these defendants confined in the Copper Company's building? A. Building?

X. Yes, YMCA? A. Well the building was—I was responsible for the building at that time. It had been placed in my charge.

X. By the Copper Company? A. By an official of the Copper Company, yes, sir.

X And at the same time while you had these defendants in custody there you had quartered in that building large numbers of special deputy sheriffs, used to guard the Copper Company? A. I did not.

X. How many did you have there at the time these men were placed in custody?

Mr. Frazier: I object to that, if the Court please.

The Court: Yes, the only reason I would let that in, of course, we are not concerned about the merits or demerits of the trouble between the company and men—we are concerned to find out if there was conspiracy to blow up some Government property—but that might reflect on the credibility of the confessions.

Mr. Baker: At the time you took these defendants in custody to the YMCA how many special deputy sheriffs did you have there in the building?

A. Is that the question you asked the other time? I thought you said to guard the Tennessee Copper Company.

X. Well, put it either way you want to, Sheriff, how many did you have? A. At Copperhill, possibly at that time I had from fifteen to twenty-five deputies.

X. They were all stationed at the YMCA? A. Yes, sir.

X. Now, I will ask you this question, Sheriff, if the Copper Company wasn't as a matter of fact paying those deputies you had there?

Mr. Frazier: I object to that.

The Court: Sustain the objection.

Mr. Baker: We want to except to your Honor's ruling.

The Court: All right.

Mr. Baker: Now, at the time you had these men in custody there, I will ask you if your deputy sheriffs didn't continuously walk in and out of the building armed, carrying guns?

A. I suppose they were armed, yes, sir.

X. They all went armed at all times, did they not? A. I take it they did, I did.

X. And they walked in and out past where these defendants were, did they not? A. No, sir, they didn't walk in and out past the defendants.

X. Where did these defendants sleep in the YMCA Sheriff? A. Different places, Mr. Baker. They slept in the beds that had been used by my deputies.

X. Well, did they sleep in the same room with the deputies? A. Possibly some, yes.

X. You had no private place to put them? A. Well, yes, it was private.

X. Now, Sheriff, did you see any of these men eat anything? A. I did.

X. Where did you see them eat? A. Off the table where all of us had our meals.

X. Earl Hubbard ate there? A. Earl Hubbard ate there, yes, sir.

X. Ed Simonds? A. They all did.

X. Felton Woodward? A. Yes, sir.

X. They had all their meals at the YMCA? A. No, sir, I didn't say they ate all their meals there.

X. If one was at the city jail what did he do—eat at the jail? A. No, he ate just exactly what the rest of us ate.

X. You sent him the same thing over? A. Yes, sir.

X. Now, while you had these men in jail you refused to let anybody see them, didn't you? A. No, sir, I didn't refuse—possibly one or two men that kept coming there, I did refuse to let them in.

X. Do you know of one of these defendants ever seeing anybody while he was in jail? A. Yes, I think some of their people was allowed to see them.

X. Now, I will ask you specifically if you and your officers didn't refuse to allow Sid Howell to see Felton Woodward? A. Possibly so, I didn't refuse to let Sid Howell see Felton Woodward, but he possibly was not allowed to see him while he was being talked to by me or some of my officers.

X. Did you see any outsider at all in that YMCA while these men were being questioned and held there? A. Any outsider at all?

X. Yes? A. I tried my best to keep outsiders that were not interested out but regardless of that there would be somebody get in.

X. If somebody got in it was a mistake on somebody's part? A. Yes, sir.

X. And you had no intention of allowing these men to see anybody, did you? A. I think some of them were allowed to see their people on occasions.

X. Who, for instance? A. I just don't recall.

X. You can't recall any defendant that saw anybody from the outside while you had him in this YMCA building? A. I am not sure about it, but I think—I think we sent after some of their relatives for some of the defendants to see.

X. When did you do that, Sheriff? A. I am not sure just what date it was.

X. Whose relatives did you send after? A. I am sure we sent for Earl Hubbard's wife. In fact, I sent for her on two or three different occasions.

X. That was on Tuesday? A. I don't know just the date.

X. The day these defendants were brought to Chattanooga? A. I don't remember what day that was.

X. Now, you were working in cooperation with the agents of the FBI weren't you? A. I was.

X. And as you say, you had made some investigation of this matter before they came? A. Yes, sir.

X. When Mr. Roche reported there you told him who you thought out to be arrested? A. I did not.

X. You told him who you thought he ought to talk to? A. Mr. Roche came into the Copper Basin, he and Mr. Mann, one night, and I talked with him and tried to the very best of my ability to give him a picture of what I had developed from my investigation.

X. Talked to him in detail? A. I did.

X. And you finally told him who you thought ought to be questioned in reference to these matters, did you not? A. I investigated to find out the best I could all the men in the Basin that had had experience with powder and dynamite—I tried to determine who could possibly be guilty of these explosions, and I gave that information to the agents.

X. Mr. Roche? A. He was one of them.

X. On or before the 22nd day of April, before the third explosion, you and another party told Mr. Roche the explosion was going to happen, didn't you? A. I knew exactly when it was going to happen.

X. You knew exactly? A. Yes, sir, missed it three minutes.

X. And you knew where it was going to be? A. Yes, sir, approximately.

X. Approximately where it was going to be? A. Yes, sir.

X. And you knew within three minutes of the time when it was going to be? A. My information was the explosion would occur at 1:20 and it happened at 1:17.

X. You missed it three minutes; and you had that information as much as two or three days before the explosion? A. No, sir.

X. Well, you had it a day or two? A. No, sir, I had information that there was going to be another explosion in a day or so, and I received information about 8:00 o'clock on the night the explosion occurred that it would happen about 1:20 and it actually happened at 1:17.

X. Did you communicate that information you had to Sheriff Collins of Fannin County, Georgia? A. No, I did not.

X. Made no effort to prevent the explosion? A. I did. I did prevent one explosion.

X. And you made an effort to prevent this particular explosion? A. Yes, sir.

X. But you didn't communicate with the Sheriff of Fannin County, where it was supposed to be? A. Well, I had quite a lot to do to look after my own business—most of it was happening right there in my County.

X. And you thought that was up to the Sheriff of Fannin County to find out about it himself? A. No, I didn't think anything about the Sheriff of Fannin County at that time.

X. Now, you communicated with Mr. Roche and Mr. Plaxico about your information, did you not? A. I did.

X. On the night of the 22nd? A. On the night of the explosion, I don't recall just what date.

X. I will ask you if it was not on the morning of the 23rd, at 3:30 o'clock at the New York Hotel when you communicated that information to Plaxico and Roche? A. I did not.

X. Did you ever go to the New York Hotel at 3:30 on the night of the 22nd, or the morning of the 23rd? A. I stayed at the New York Hotel myself.

X. Did you take a witness or person there to talk to Roche and Plaxico on the night of the 22nd, or the early morning of the 23rd, about 3:30, and talk to Mann, Roche and Plaxico? A. No, sir, I didn't see Mr. Roche on that occasion.

X. You did talk to some of them? A. I talked with Mr. Mann.

X. About 3:30 in the morning? A. Possibly. I called for him to come in there and waited for him and he got into the Basin about 2:30 or 3:00 in the morning, yes, sir.

X. And you communicated at that time this information to him there would be an explosion at 1:30 the following morning? A. No, sir, I did not.

X. You didn't do that? A. No, sir.

X. And there was no discussion of that? A. There was discussion there would be an explosion but not at any certain time.

X. Now, you say you arrested most of these defendants. Where did you arrest Martin Simonds? A. At the YMCA building, Copperhill.

X. You arrested him at the YMCA? A. Yes, sir.

X. You know how he got to the YMCA? A. Yes, sir.

X. How did he get there? A. He came there in an automobile.

X. Did he drive it up there himself? A. No, sir.

X. Who drove it up there? A. One of my officers went in company with two agents over to Martin Simonds' home and questioned him and talked with him. When they came back to Copperhill Martin Simonds was with them. I asked my officer "you didn't attempt to arrest that man in North Carolina," he saic no, he came back voluntarily.

X. He came back voluntarily with one of your officers and two agents of the FBI? A. Yes, sir.

X. Where did you arrest Robert Lee Ballew? A. I think the same thing happened only maybe he was in Georgia at the time the agents and my officer went and talked with him and he came voluntarily.

X. He volunteered and got in the car with your officer and the two FBI men and came across the state line? A. My officer possibly asked him if he would come voluntarily over to the YMCA to be talked to. That is the information I received from my officer—he asked him if he would come over there to be talked to and he voluntarily agreed to come.

X. How about Ben Cross, where did your officer find him? A. In Georgia.

X. He volunteered to come back with him, did he? A. Very much.

X. Glad to? A. Said he wanted to see them—he had been hearing about those agents and wanted to talk to them.

X. Wanted to come and talk to them? A. Yes, sir.

X. Now, Sheriff, for some period prior to these explosions and all during the time of these explosions, I will ask you if you didn't have a standing order on file that all your deputies were to search all these defendants' cars that were found out at night?

Mr. Frazier: We object to that.

The Court: Sustain the objection.

Mr. Baker: That is asked for this purpose, there is a great deal of testimony some of the defendants were transporting powder back and forth through Polk County. I want to show by this witness those were stopped.

The Court: Sustain the exception.

Mr. Baker: Except to your Honor's ruling.

X. Sheriff, you say you arrested all these men on information they had committed a felony; do you now have any charges pending against any of them as a result of that information, in Polk County?

Mr. Frazier: Object to that—it is immaterial whether he has or has not.

The Court: Well, let him answer.

A. No, sir, there is not any charges.

X. The Grand Jury no billed all of them? A. No, sir.

X. Did you ever present charges to the Grand Jury? A. Yes, sir.

X. Didn't they no bill— . A. All these defendants were never charged with—there is possibly one or two of them that stood charged in State court up there, and Felton Woodward was indicted. I don't recall just any more of them—Marion Ellis was charged in the State court with committing a felony. It is my understanding, or if my memory serves me right, I think there was a no bill in that case.

X. Sheriff, you had arrested these people for a felony, and yet you never placed any charges against them in State court? A. I arrested them for committing a felony in Polk County, and after I had made what investigation I could of it I turned them over to the United States Government.

X. That was the end of your interest? A. No, not the end of my interest—it was the end of my official duty in regard to these defendants.

X. Well now, when did you turn these defendants over to the United States Government? A. I don't recall just what date that was.

X. Well, in reference to the time you arrested them, when did you turn them over to the Government? A. I just don't remember what date it was.

X. Well, was it Saturday? A. I couldn't say.

X. Well, was it a day or two after you arrested them, when you turned them over to the Government? A. Yes.

X. Was it a day or two days? A. Might possibly have been three days.

X. Well, was it more than three days? A. I don't know just what day it was.

X. Well, you did turn them over to the Government several days before they were brought to Chattanooga, didn't you? A. No, sir.

X. You did not? A. I did not.

X. Well, did you turn them over to them one day before that? A. I don't recall just when they were turned over to them.

X. Did you turn them over the same day they were brought down here? A. Mr. Baker, I don't remember just when they were released to the United States Government.

X. You recall telling me in the Marshal's office on the 20th of April you were holding them for the Government? A. How is that?

X. Didn't you tell me in the Marshal's office on the 29th of April you were holding them for the Government? A. I remember seeing you in the Marshal's office some time—I don't remember what day it was.

X. Well, did you tell me at that time you were holding them for the Government? A. I might possibly have —I couldn't say about it, I don't remember.

X. You just don't remember the date? A. No.

Re-Direct Examination by Mr. Badgett.

RQ. Sheriff Biggs, how many men did you suspicion of dynamiting up there? A. Well, after my investigation to find out how many men were in the Basin that had had experience as powder men, or men that used dynamite, I sifted it down to about ninety men—possibly later on down to sixty or seventy-five, and I had under suspicion all of those men that had had experience with dynamite

that I thought might possibly have something to do with it.

RQ. Now, this information about this explosion that you had where the information was only three minutes wrong, did you have any definite information as to whereabouts on the line it would happen? A. My information was that both ends of the line, the Parksville end and Blue Ridge end and the copper mine at Isabella would all be blown up at the same time.

RQ. You didn't know whereabouts on the line it would be? A. Didn't know exactly on what tower on either end of the line it would be.

RQ. How long are those lines? A. Several miles.

RQ. Well, twenty miles? A. I would say possibly the Blue Ridge line would be eight or ten miles—possibly more, and the Parksville line would be twelve or fifteen miles.

RQ. Through rough country? A. Very rough country.

RQ. Now, you say you had information that the Isabella mine would be blown up too? A. Yes, sir.

RQ. That is the copper mine, isn't it? A. Yes, sir.

RQ. Your information was that from the same person that told you about this explosion that would happen and missed it only three minutes? A. Yes, sir.

RQ. What did you do to prevent it? A. My information was that a number of these defendants were going into the Isabella mine, down the ladder rope, and I stationed a number of my deputies at that place to prevent any one from getting in there to dynamite the mine and blow it up.

RQ. Well, what happened? A. It didn't blow up.

RQ. I mean did they go there? A. Yes, sir.

RQ. Just tell what happened, Sheriff? A. I had a number of my men around this mine to try to prevent them from blowing up this magazine in the mine, and there was a dog walked up to these men, and the next morning after daylight they circled around some distance and found several tracks. Of course they didn't see the man but there had been somebody close to the opening of the mine there—I would say within a hundred yards of it.

RQ. Sheriff, who was it gave you this information? A. Freed Long.

Re-Cross Examination by Mr. Baker.

RX. Sheriff, I show you here a blank piece of paper and ask you if you can tell me what that is? A. That is a blank mittimus for Hamilton County, Tennessee.

RX. Is that the same type mittimus you used in Polk County? A. No, sir.

RX. You didn't use that type at all? A. I did not.

RX. I will ask you if in the mittimus you used it does not have this in it: Sheriff of whatever county it is—gives the man's name—and says "this man having been brought before me on charges"—isn't that language in any mittimus? A. Yes, sir.

RX. And then follows the charges? A. Yes, sir.

RX. And then the mittimus further recites: "Having failed to give bond in the required amount," whatever it may be? A. Yes, sir.

RX. Then you are ordered to put him in jail? A. Yes, sir.

RX. What were these defendants' bonds while you had them in jail? A. I don't recall—I think I asked for $5,000 bonds on each one of them.

RX. That was so specified in this investigation mittimus you had? A. I think that is true.

(This witness was then excused.)

The witness, DR. H. P. HYDE, having been duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

I am a physician and my office is in Copperhill, Tennessee in Polk County. On or about April 28th I had occasion to see one Earl Hubbard, one of the defendants here on trial. I saw him at the YMCA building at Copperhill. I think the sheriff called me to treat him, or requested someone to call me. When I got there he was in a room lying on a cot and he gave me a history of having a cold for a few days. I examined him and took his temperature, he had a normal temperature; he had bronchial rales, he seemed to have a cold and on obtaining a history that his bowels had not moved for some time I gave him oil or salts and cold capsules. I wouldn't think he was seriously ill, he was very depressed. He didn't have a fever but did have a common cold and I gave him the usual remedy for a common cold.

Cross Examination by Mr. Thrasher.

I took his temperature and he didn't have any fever. The capsules I gave him are known as Dover's capsules, or Dovers' Powders, caffein, phenacetin and other things, 10% opium, quarter grain to the capsule. It is a narcotic but is exempt under the narcotic law. It also contains

Acidacytlsalicitic, it also contained epicac. Dovers powders is powdered epicac, except as to the base. I also gave him phenacitin and that is an anti-febrin, and is given for cold. Phenacetin is given to reduce temperature, it causes them to perspire and reduces the fever and that is one of the things it is given for and acidactylsalicitic is given also to reduce fever. I was not giving it to him for the purpose of reducing fever, I was giving it to him as a sedative and to loosen his cold up. He didn't complain, that is of pain, but said he had a cold.

Re-Direct Examination by Mr. Badgett.

I am under subpoena here as a witness for the defendants. I gave him the regular cold capsules, we have them prepared for that purpose and I gave him just what I usually give for a common cold. The narcotic I gave him is exempt, the capsules didn't have enough opium to come under the law, you don't have to write out a narcotic blank. I wouldn't think the amount of opium in the capsule would have any effect on his mental faculties.

Re-Cross Examination by Mr. Thrasher.

His condition was depressed and he was nervous; he was lying on a cot.

(This witness was then excused.)

The witness, WILLIAM ROSE, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is W. C. Rose and I am a deputy sheriff in Polk County, Tennessee, and was such deputy sheriff

the latter part of March and first of April, 1940. I was a deputy sheriff when these dynamitings occurred. I know John David Queen and Robert Lee Rhodes. They never told me anything about dynamiting before the Federal Bureau of Investigation Agents came there. After they had made a confession to the Federal Bureau of Investigation they told me about it verbally, in the city jail; there were five of them in there together. I can't say whether Queen told me what he did or not, and I don't believe Rhodes did either, but I believe Ed Simonds did. I never took any food to Earl Hubbard, but I did take him upstairs and he ate with me at the YMCA. He ate the same food I did. I recall that I took him up there two times. The food for the men in the city jail was prepared in the kitchen at the YMCA and was taken down there to them.

Cross Examination by Mr. Baker.

I didn't see food taken to them at the city jail. I saw it prepared at the YMCA but didn't see it taken down to the city jail.

(This witness was then excused.)

The witness, CREED BROCK, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Creed Brock. I am a deputy sheriff of Polk County, Tennessee, and was such a deputy sheriff the last of March and month of April, 1940. I was a deputy sheriff when the TVA power lines were dynamited. A bunch of the men who were arrested up there were in my custody at the YMCA at Copperhill. I was foreman of a bunch of deputy sheriffs stationed at Cop-

perhill, was in charge of them and these men were placed in my custody there at the YMCA. They ate the same food my men were eating and I ate at the same table most of the time. Some of them were sent down to the city jail. The men down at the city jail would have sandwiches and coffee or milk, either one they wanted. I don't know exactly how many of them stayed at the city jail. They were not at the jail but a short time, some of them probably spent two nights there and that is the most any of them spent at the city jail and the balance of the time they stayed at the YMCA and had the same food I had. They slept in the same kind of beds the boys under me slept in. These beds were single cuts, with mattress and pillows. I slept in the same kind of bed myself and one of these men slept in my bed most of the time while he was there, that was Earl Hubbard. I had used the bed for about eight months.

Cross Examination by Mr. Baker.

I was foreman of the deputy sheriffs there at Copperhill, I had charge of the group of deputies there and these defendants were directly in my custody. I went to Polk as a deputy sheriff for Sheriff Biggs on the 23rd day of August, 1939.

X. You were employed there and in charge of a group of deputy sheriffs who were guarding the Copper Company? A. I was a deputy sheriff up there.

Mr. Frazier: We object to that, that is not material whether he was employed by the Copper Company or not.

The Court: I don't think so; objection sustained.

Mr. Baker: We note an exception to your Honor's ruling.

The Witness: Before I became a deputy sheriff I lived at Benton, Tennessee, and have been a deputy sheriff ever since the 23rd of August, 1939. In April, 1940, I had fifteen or sixteen deputy sheriffs under me, stationed at the YMCA in Copperhill and they all lived and stayed there at the YMCA at that time.

(This witness was then excused.)

The witness, C. J. COCHRAN, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is C. J. Cochran, I live about four miles from the City of Benton, Tennessee, in Polk County: I have been an officer and was a deputy sheriff in 1939 and 1940 and was a deputy sheriff at the time of these dynamitings. I stayed at Copperhill at the YMCA while I was a deputy sheriff. I saw some of these defendants there at the YMCA in custody. We had pretty good meals there at the YMCA, we had roast beef, just any kind of meat, potatoes fixed different ways and I called it extra good eating. The defendants ate there with us while they were custody and ate the same that we did. We had reasonable good beds there and they slept in the same beds that we did. I have carried meals to the ones down at the city jail: I carried those meals from the YMCA. They were cooked there at the YMCA and were carried down to the city jail and were the same kind of meals we were eating there at the YMCA.

Cross Examination by Mr. Baker.

I am a native of Polk County. I went to work as a deputy sheriff on the 24th day of August, I think it was, 1939.

(This witness was then excused.)

The witness, J. J. HENSLEY, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is J. J. Hensley and at the present time I am employed on the gas tax department in Polk County, third district. I have lived in Polk County all my life. In March and April, 1940, I was employed as cook in the Copper Basin. I cooked for the High Sheriff, B. E. Biggs, Jr., at the YMCA building in Copperhill. I also cooked for the guards or deputy sheriffs and I also cooked for a bunch of prisoners. I see a bunch of the prisoners here to-day that I cooked for. Part of them are over there back of the table I believe there is one there I don't remember cooking for. I don't remember cooking for Collins. He may have been in jail and lunch may have been carried to him. Lunches were sent to the men in jail and I prepared them. The deputy sheriffs ate the same meals as the prisoners. They had the same thing as the guards ate. We would run a regular course of meals through the week and chicken on Sunday, roast beef, stew, steak and onions or something like that. We had coffee about 19 cents a pound, I made it in an urn and drank it myself and these men drank the same sort of coffee I did. I never put anything in the coffee. I have carried food down to the city jail from the YMCA myself.

Cross examination waived.

(This witness was then excused.)

The witness, CLAUDE COLLINS, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Claude Collins and I am a sheriff of Fannin County, Georgia, and have been sheriff of that County since 1929. On or about April 14, 1940, I had occasion to use some blood hounds in Fannin County, Georgia, up the river where a power tower had been blown up. I got the dogs at Ellijay, Georgia, and took them to where the tower had been blown up. The dog tracked off down the hill a little ways and quit. I could see the tracks where they went and the dogs didn't follow over 200 or 300 yards and then they just quit tracking and I could see the tracks leading on from there.

Cross examination waived.

(This witness was then excused.)

The witness, JAMES H. ANDERSON, being duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

Q. What is your full name? A. James H. Anderson.

Q. Are you United States Commissioner for this district? A. Yes, sir.

Q. Situated here in Hamilton County? A. In Chattanooga, yes, sir.

Q. Do you remember certain of these defendants on trial being brought before you on a charge of dynamiting Tennessee Valley Authority power lines? A. Yes, sir; I remember the circumstance.

Q. Do you remember the first instance they were brought before you? A. Yes, sir.

Q. What was the date of that; that is your record you have there? A. On the morning of April 30, 1940, I was notified by the Marshal that a number of these defendants were being brought from Copperhill to Chattanooga in a bus, and I was asked by the Marshal to go to the Hamilton County jail and arraign them, as a matter of convenience. I went to the jail and I was there when some of the defendants, I can give their names—

Q. What was the date of that? A. The 30th of April, 1940. I was there when they were brought in.

Q. Does your record reflect what you are testifying now? A. Yes, sir.

Q. Which of the defendants plead guilty before you at that time—did you read the charge to them? A. I might say that when the defendants got out of the bus they filed into what might be termed the reception room, or cage, there at the jail, and after they got in there I read the complaint to them and explained it and I told them—

Q. What were they charged with? A. Conspiracy to dynamite or destroy property belonging to the Tennessee Valley Authority, a corporation owned by the United States Government.

Q. By dynamiting power lines and towers? A. Yes, sir, I told them as I called their names, they were standing on one side of the room, to either state they were guilty or not guilty, and I cleared out one corner in the room where some officers happened to be standing, and I told them that any of them who wanted to plead guilty would so plead and step over in that corner, and when I called the

names of Ed Simonds, Bob Rhodes, David Queen, Felton Woodward, and Earl Hubbard, they stepped over to themselves and said "guilty."

Q. Said they were guilty? A. Yes, sir.

Mr. Townsend: Who was that?

The Witness: Ed Simonds, Bob Rhodes, David Queen, Felton Woodward and Earl Hubbard. The others plead not guilty.

Cross Examination by Mr. Baker.

Mr. Baker: I take it that under your Honor's ruling we will have to make him our witness, and I think it will be proper to do that and let him get away now.

The Court: All right. Who all was present there, what defendants, do you have a list of all there present?

The Witness: Yes, sir; the defendants coming in on that bus were Ed Simonds, Martin Simonds, Clint Huffman, Gordon Parr, Rhodes, Queen, Woodward, Earl Hubbard, E. B. Green, Tate Green, Ben Cross, John McGhee, Wayne Henry, Meegs Collins, Postelle and Marion Ellis.

Mr. Baker: What bond did you fix for the defendants at that time, all of them?

A. I fixed bond at $3,000 for all of the defendants as I now recall, except Anderson and Jones. I fixed their bonds at $5,000.

X. They were not at this particular hearing? A. No, they were arrested later on.

X. At the time you committed these defendants to jail, on or about April 30th, I will ask you if Agent Mann of the Federal Bureau of Investigation, didn't ask you at that time to fix bond of certain defendants at $1,000 and others at $3,000? A. Yes, sir, Agent Mann requested that

I fix bond of some of them, and I believe it was the five that pleaded guilty at $1,000; but I disregarded his request and fixed all bonds, except Anderson and Jones, and they were not there at the time, they were arrested later.

X. I will ask you if, on or about May 3rd, Agent Mann came back to you and again requested you to reduce the bonds from $3,000 to $1,000? A. Agent Mann didn't come to me on May 3rd, as I recall. He approached me shortly before that time, and I did fix on May 3rd—

X. That is your official record you have before you? A. Yes sir.

X. I will ask you to read from your official record for May 3rd? A. On May 3rd, 1940, Clyde Huffman was brought before me by a deputy sheriff, and at the request of Agent Mann the bond of certain defendants was reduced $1,000, and they executed bond for appearance before me on May 6th. Ben Presswood, surety. But, Mr. Baker, you will recall that you and Mr. Townsend and others, were after me very persistently to reduce these bonds, and while the record does not show that, it was because of your insistence, and that of Mr. Townsend and others, that I, because of these requests that had been made by Mr. Mann, reduced some of these bonds.

X. Later, on May 6th, you reduced the bond to $1,000 didn't you? A. Yes, sir.

X. Prior to May 6th the bonds remained at $3,000? A. Yes, sir. That was done at your request. In addition to that, I spent one night in Ducktown so as to help these people make bond, I was up there all night, and got back and released these men at 3:00 o'clock on the morning of May 7th, on $1,000 bonds.

X. I will ask you to refer to your record for May 3rd, and see if John McGhee was required to make bond of $3,000 on the 2nd day of May? A. That is true. That was before I had reduced any bonds.

(This witness was then excused.)

Mr. Badgett: The Government rests in chief.

Mr. Baker: I would like to have the jury excluded.

The Court: All right, I will excuse you gentlemen.

(The Jury then retired from the court room.)

Mr. Baker: Your Honor, before making a general motion I want to take up some of the defendants separately.

The Court: You would like to do what?

Mr. Baker: Take up some of the defendants separately.

The first defendant, James Gordon Parr. I move the Court to direct a verdict of not guilty as to him. His name is not mentioned any place in the testimony as I recall.

The Court: All right.

Mr. Baker: Clyde and Clint Huffman. There is no testimony against either of them. The only testimony at all is Freed Long said that when he first went to attend a meeting he did meet with Anderson and McGhee and Rans Smith and that the Huffman boys were coming out of the office at that time, but that he had no conversation with them whatever. That is the only times their names have been mentioned.

The defendants Leslie Bryant Green and Tate Green. The only time their names have been mentioned, Freed Long testified he was at this meeting at the Isabella Union Hall on April 18th and that at that meeting Ed Simonds

made the statement that the Green boys ran off and left him on the explosion on the 14th. The Green boys were not present at that meeting. That is the only times their names have been mentioned.

Benjamin Cross's name hasn't been mentioned in the testimony in any way. No one has mentioned his name at all.

Noel Martin Simonds. The only testimony against him it is claimed he was at this meeting on April 18th.

Theodore Woodward. There is no proof that he did anything at any time or said anything, as I recall it.

Marion Ellis. The only proof against Marion Ellis is they claim they found a brace and bit in his car, and inch and a quarter bit. Yet they claim the holes were bored with a bit they had here and which is a two inch bit. In addition to that Freed Long said Marion Ellis drove him to Ducktown in Anderson's car but he had no discussion with Ellis at that time and no statement was made to show why he took him there. He merely rode in the car to Anderson's office.

Van D. Jones. There is no evidence whatever in any respect against Van D. Jones. His name was only mentioned as having registered at the Key Hotel on April 8th and checked out on April 9th. He never attended any meeting or discussed plans with anybody or had anything to do with it. That is the only time his name is mentioned in the proof. The proof also shows that Van D. Jones was registered in the Key Hotel on April 14th and checked out on the 17th.

John McGhee. There is no proof against John McGhee, except they say he was at the first meeting. Freed

Long testified Rans Smith and Anderson and John McGhee were present in Anderson's office when he first went there on or about April 13th and some discussion was had at that time about explosions but no definite plans were made about anything. Just a general discussion.

Wayne Henry. The only time his name is mentioned is it is alleged he was present at the meeting on April 18th.

Rans Smith. The only thing testified about Rans Smith was that he was supposed to have been at one of the meetings.

That, as I recall, is the proof on those various defendants. I don't think I have misquoted it to your Honor.

Does your Honor want me to make a general motion before you rule separately?

The Court: Yes.

Mr. Baker: If the Court please, generally we move the Court to direct the jury to return a verdict of not guilty, because the Government hasn't shown a conspiracy was entered into at any time.

The rule is that the conspiracy itself, the agreement or combination is the *corpus delicti* in a case of this kind. There is some testimony, in the statements of co-conspirators or co-defendants that they made certain statements or did certain things with reference to explosions, but there was no plan or agreement shown and the only witness that they have to show there was any meeting or agreement of any kind or discussion of any kind is the witness Freed Long, who under his own statement is a co-conspirator, if there was a conspiracy.

Then, in addition to Long's testimony, it was all in reference to some sort of agreement to cause explosions

in the mines. There was a discussion though wherein he testified by inference something was mentioned about the power lines once or twice. But the general discussion testified about was in reference to the mine.

In reference to Mutt and Tate Green, they have to prove there was a conspiracy and Mutt and Tate Green were involved in it, before the statement Ed Simonds made at the Union Hall would be competent against them. They would have to show by other proof somewhere that there was a conspiracy, outside of that proof. Of course the rule is that a statement made by one conspirator is admissible against all of them. They would have to show which one of the parties was a party to that conspiracy and there is no proof that Mutt and Tate Green were parties to the conspiracy and they were not present when the statements were made.

In addition to that we move the Court to exclude from the consideration of the jury the confessions or statements alleged to have been given by John Edward Simonds, Felton Woodward, Earl Hubbard, John David Queen, Robert Rhodes and Robert Ballew, because the proof shows the statements were made as a result of duress and coercion and promise of reward.

The Court: Is that all, Mr. Baker?

Mr. Baker: That is all for the present. I may have something else in a minute.

The Court: I think I will rule on part of that at the present and then get to the balance.

On the motion to direct a verdict as to all defendants because there is no proof of a conspiracy. The Court is of opinion that there is proof of a conspiracy and the general

motion as to all defendants will be denied on that ground.

Mr. Baker: Let the record show an exception.

The Court: On the motion to supress the evidence because the confessions were illegally obtained. That has already been ruled on and the same ruling is adhered to and the motion to direct a verdict or suppress that testimony is overruled.

Mr. Baker: We note an exception.

The Court: The motion I am now to pass on having been made separately as to each one, the Court will pass on it separately, as they appear on my docket.

The case of Mitchell Clifton Anderson I think is sufficient to go to the jury, and I decline to direct a verdict.

The case of Van D. Jones I think is not sufficient to go to the jury, and the Government has agreed there should be a directed verdict, so the Court will direct a verdict as to him.

The case against John Edward Simonds, the proof is sufficient in my judgment to go to the jury. Decline to direct a verdict.

The same will be true as to Felton Moore Woodward; same is true as to Earl Hubbard; the same is true as to John David Queen; the same is true as to Robert Lee Rhodes; and the same is true as to Robert Lee Ballew. That is as to the six last named I decline to direct a verdict.

Direct a verdict as to James Gordon Parr, there being no proof in my judgment to go to the jury, and it being agreed by the Government.

In the case of Tate C. Green and Leslie Bryant Green, I am of this opinion—the only proof I see in that case is proof of Long, after a statement made by Simonds—that is, Ed Simonds—that these two defendants were with him at the time when there was a dynamiting of the tower.

The law seems to be this, gentlemen:

Reading from the case of *Thomas* v. *United States*, 57 F. 2d 1039, the Court said:

"To render evidence of the acts or declarations of an alleged conspirator admissible against an alleged co-conspirator, the existence of the conspiracy must be shown and the connnection of the latter therewith established."

Reading from the case of *Polk* v. *United States*, 289 Fed. 312:

"Before the declaration of an alleged co-conspirator can be admissible, the conspiracy must be shown, and it must also be shown that the defendant, against whom the evidence was offered, was a party to such conspiracy."

That seems to be the law and seems to be the law under the reasoning. A man could not by his own statement make himself a conspirator, or the statement of a third person could not make him a conspirator. So I think that being the only proof, as far as I know—any other proof? I don't think that proof would make a case against them.

Direct a verdict as to Tate C. Green and Leslie Bryant Green.

Take up the Huffmans—Clyde L. Huffman and William Clint Huffman. I have read the evidence of the wit-

ness Long as to these defendants. The only proof as to them as I have followed the proof is what has been offered by Long in connection with the first meeting—said there was to have been a meeting at Mr. Anderson's office, and while Long—one party said they had a conversation where they were present, but when he details the conversation he practically says there were only four present, to-wit: himself, Mr. Anderson, McGhee and Rans Smith. I couldn't let that stand even if the jury found against him, on that evidence.

Direct a verdict as to Clyde L. Huffman and William Clint Huffman.

As to John E. McGhee, I think there is sufficient evidence for the jury to determine his case. Decline to direct a verdict.

Marion Ellis is a closer proposition, but I think there is enough proof for the jury to decide his case. There is proof there he carried this Long to Mr. Anderson's office; also that this auger was found in the car. I think that is a jury question. Decline to direct a verdict as to him.

Benjamin Cross, direct a verdict for him, the gentlemen agreeing that it should be done.

As to Joel Martin Simonds, I think there is enough proof, in my judgment, in the case to decline to direct a verdict.

The same is true of Thomas Wayne Henry, Meggs Collins and William Rans Smith. All those, decline to direct a verdict.

Theodore Woodward, for the present I am going to decline to direct a verdict.

A verdict will be directed in favor of Van D. Jones, James Gordon Parr, Tate C. Green, Leslie Bryant Green, Clyde L. Huffman, William Clint Huffman, and Benjamin C. Cross, and denied as to the other defendants.

Mr. Baker: We want to note an exception to your Honor's ruling. I didn't know hardly how to organize my proof until I found out how your Honor was going to rule on the motion. I would like to have a recess for about half an hour.

The Court: All right, take a recess for thirty minutes.

(The Jury then returned to the Jury Box.)

The witness, DR. H. P. HYDE, being duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Dr. H. P. Hyde, I have been a practicing physician in Polk County, Tennessee, for about twenty-one years. I am pretty well acquainted in that settlement up there. I know the defendants Leslie Bryant Green and Tate Green. I have known them sixteen years and know their general character and reputation in the community and it is good and from that reputation and character they are entitled to full faith and credit on their oath in court.

I have known the defendant Joel Marfin Simonds twenty-five years, and his reputation and character is good and he is entitled to full faith and credit on his oath in this court.

I know the defendants Clint and Clyde Huffman and have known them for about eighteen years and their

character and reputation is good and from it they are entitled to full faith and credit on their oath in court.

I know the defendant John McGhee, and have known him for eight or ten years and his character and reputation is good and from it he is entitled to full faith and credit on his oath in court.

I have known Ben Cross I guess about four years and his character and reputation is good and from it he is entitled to full faith and credit on his oath in court.

I know Earl Hubbard and have for sometime and his character and reputation is good and from it he would be entitled to full faith and credit on his oath in court.

I know John David Queen, have known him for ten or twelve years and know his general character and reputation in the community and it is good and from that he would be entitled to full faith and credit on his oath in this court.

I know Ed Simonds and have for four or five years and know his general character and reputation in the community and it is good and from that general character and reputation he is entitled to full faith and credit on his oath in this court.

Cross examination waived.

(This witness was then excused.)

The defendant, JOHN E. McGHEE, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is John E. McGhee. I am 48 years old and have ten children. I formerly worked for the Tennessee Copper Company and came out on strike on the 24th of

August, 1939. I am a member of the International Union of Mine, Mill & Smelter Workers and am affiliated with the CIO. Following the course of the strike I was on the relief committee and was also a picket captain. I had charge of six pickets. It was my duty as such captain to supervise the activities of these pickets and I had occasion to be frequently in the union office. I know Freed Long. I was never at a meeting with Rans Smith and M. C. Anderson where Freed Long was present at any time and particularly on or about the 12th, 13th, or 14th of April, 1940. I never at any time discussed with Freed Long anything about dynamiting any mines or anything of that kind. Freed Long was not a member of the Union and while he might have been permitted to attend the meeting at the Isabella Union he would not have been where I was a member. I think he was out on a withdrawal card and with a withdrawal card he would not be permitted to attend the union meetings. He was never at a union meeting of any kind that I attended. On or about April 13th or any other time I didn't take Freed Long in M. C. Anderson's car and drive him home. I probably attended the union meeting at Isabella April 18th or 19th. I attended about all of them, the meeting was probably on the 19th of April. That was a meeting for the entire membership and they were business meetings and nobody except members were present. There would ordinarily be 150 to 200 present at one of those meetings. I never attended a meeting on or about April 18th when Ed Simonds, Felton Woodward, Earl Hubbard, Wayne Henry, Meegs Collins and myself were present. I never attended a meeting on or about April 18th

when only a small group was present. At all the meetings we had there was always a large crowd. I never attended a meeting at Isabella at any time when there was any discussion about dynamiting. I never discussed with Freed Long on or about April 18th or at any other time anything about dynamiting. I never discussed it with him at any time or at any place, especially at the Union Office or at any other place. I was present when Freed Long had a conversation with Wayne Henry, M. C. Anderson, Rans Smith and you in Copperhill. The best I recall the date it was on the 6th of this month, that is the 6th of January, we were in a car over there talking. We were in a car, M. C. Anderson's car, Mr. Baker, Mr. Anderson on the front seat, and Mr. Smith and myself on the back seat and Wayne Henry was standing on the ground and Freed Long came up to the car and stuck his head through the front door glass and gave Mr. Anderson or Mr. Baker a piece of paper. He said there was some information that might be good, that there was somebody at his house with a subpoena for him to come to court at Chattanooga and he only had $1.50 in money in his pocket. He said he didn't want to go there and Mr. Baker asked him did he know anything and he said no I don't know anything and he said if you will give me $25 I will go there and swear anything you want me to. Mr. Baker said we don't do business that way Freed. The piece of paper had some witnesses' names on it. I don't remember who he said had been subpoenaed, I don't remember them all but I might call a few if you want me to. I believe Cecil Payne and a man named Queen and someone else's name was on the paper.

Cross Examination by Mr. Badgett.

I have been in Mr. Anderson's car several times; I have driven his car on several occasions. Mr. Anderson and I are not bad friends and I have been friends with some of the defendants for a good many years. I have known some of them for years and some I have not. We are friends. I have known M. C. Anderson, I guess about five or six years. He is an Organizer for the International Union of Mine, Mill & Smelter Workers, and does not live in Ducktown or Copperhill. I can't hardly tell you when he first came to the Copper Basin. It might have been in the latter part of 1938. His office when he first come to Ducktown was at the Hotel and later he moved down to Lefever's house in Ducktown. I remember about the power lines being dynamited. I didn't hear the shots go off but I am pretty sure they were dynamited, I heard it being talked but I didn't go there. I don't know whether the Copper Company had it done or not, I don't know who did it. Freed Long came and said he had some information and Mr. Baker asked him what he knew and he said he didn't know anything. He handed them what he said was some information that might be good and they asked if he knew anything. Freed Long told Mr. Baker he had some information and Mr. Baker asked him what he knew and he said he didn't know anything. Mr. Baker asked him if he knew anything and he said no he did not but he had already said he had some information. He didn't offer the information for $25 but he said he would come down here and testify for $25, anything they wanted him to and that was after Mr. Baker had asked what he knew and he said nothing. We have had several union meetings up

there and I don't deny we had a union meeting on April 18th. At any meeting on April 18th there was no discussion going on with these other men, M. C. Anderson, Martin Simonds, Ed Simonds, Earl Hubbard and others where dynamiting Tennessee Valley Authority power lines and blowing up the mines was discussed. There was nothing said about that. I don't know whether there was a union meeting on April 13th or not. We had meetings frequently, I don't know how often and I will not say that we did or did not. I was in Anderson's office nearly every day but we didn't have meetings there, we had them at the union hall. I would go to the office to attend to business, I was on the relief committee, relief business, and there were several other men on the committee. I am satisfied I was in Anderson's office every day of the week and I also used his car a number of times. Marion Ellis stayed there quite a bit of the time and he also used Anderson's car. I can't tell you whether he ran errands for Anderson or not, I don't know about that, but I have seen him driving Anderson's car, sometimes by himself and sometimes with others. I have seen him with others in the car lots of times and I have seen him leave in the car and come back. I don't know that I have seen him bring others back in the car to Anderson's office. I have seen him go and come back and also other people. I was not working for Anderson and if Marion Ellis was working for him he wouldn't get any pay for it, but he was there in Anderson's office several times. I don't know anything about Marion Ellis getting Freed Long in Anderson's car and bringing him there to Anderson's office on the 13th. I never saw Freed Long in the car with Marion Ellis. I

was a picket captain and I had about about six pickets under my control. I was not with Anderson any more than anybody else that I know of. Anderson was not a striker and I guess I was captain on the picket line when the trestle was blown up that leads into the mine. I am pretty sure I was.

Re-Direct Examination by Mr. Baker.

At first there was 500 or more men, between 500 and 600 men out on strike. There was probably at that time about 400 families on relief. The relief was being furnished by the International Union of Mine, Mill & Smelter Workers and if was necessary for somebody to check those relief orders every day to see where they went and how much each family was entitled to and that is what I did, or helped do on the relief committee. It was necessary to have somebody on the committee to check those relief orders every day and I helped do that. There was also a lot of drug bills and somebody had to check them the same as the others. Also the Union was buying wood and coal for the families out on strike and somebody had to check that. The International Union has had an organization at Ducktown and Copperhill since 1933 and that was before Anderson ever came there, before I ever knew Anderson.

Re-Cross Examination by Mr. Badgett.

The strike was not called for probably eight to twelve months after Anderson first came into the Basin up there. He was not in the Basin all the time, he was in and out. At these meetings I have been talking about I don't remember any discussion about a reduction of the output of

the plant up there. Most of the discussion has been in reference to relief and how we could keep on feeding our families. I don't recall any discussions at the meeting as to how the strike might be won.

(This witness was then excused.)

The defendant, WILLIAM RANS SMITH, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is William Rans Smith and I formerly worked for the Tennessee Copper Company. I am a member of the International Union of Mine, Mill & Smelter Workers and have been a member since 1933. They have had a union in Ducktown that long. I have known M. C. Anderson about two and a half years and I have eight children. I have heard of Freed Long. I didn't know him until about three weeks ago, personally. I had never met him before that time. I didn't have a conversation with Freed Long in Anderson's office when Anderson and John McGhee were present in reference to any explosions on or about the 13th of April. I never had any discussion of that kind at any union meeting or at Anderson's office at any time that Long was present. I never saw Freed Long at a union meeting and was not at a meeting of any kind at any time where dynamiting was discussed. I was with John McGhee, Anderson, Wayne Henry, and you, when we had a conversation with Freed Long at Copperhill. It was, I believe, on Monday the 6th of January, 1941. Nobody in that car sent for Freed Long. He just walked up to the car and the first I knew he was around

I looked and he walked up there. I recall the conversation with him and the best I remember this is what he said.

We were sitting there talking in the car and Freed Long happened up. Me and McGhee were in the back seat and Anderson and you were in the front seat, and Henry was standing out on the ground and Long happened up there and told Mr. Baker he had some information and handed him a piece of paper, some witnesses I suppose, he said it was witnesses. He said the officers were looking for him, the Marshal said he wanted him to go to Chattanooga to court here and Mr. Baker asked him if there was anything he knew and he said no and he said I have $1.50 in my pocket and I don't want to go. Said if you will give me $25 I will go down and swear in your favor anything you want me to and Mr. Baker said we don't do that kind of business.

Cross Examination by Mr. Ault.

I went to work for the Tennessee Copper Company in 1923, and I am still working for them. I was out on strike for about ten months in 1939 and 1940 and when the strike was settled I went back to work for them on the 27th of May, 1940. I am now on the labor gang on the job. Before the strike I was on different jobs. I have been a pump boy, pipe man, shaft man, done about everything around the mine. I have handled powder and know how to shoot dynamite. I know about fuse and that sort of thing. Dynamite is ordinarily called powder around the mines, some people call it dynamite and some call it powder. The first time I ever personally knew Freed Long was about three weeks ago. I might have remem-

bered seeing him before that time but hadn't met him. I won't say whether he knew me or not. I can't say whether he was a union man or not. If he was a union man he worked at Isabella, I worked at Ducktown. I didn't know his brother up there or his family. I know M. C. Anderson and have known him probably two to two and a half years, something like that. I first became acquainted with him when he came into the copper basin as an organizer. He was in that territory up there in April, 1940, and he had an office up there. His office was located in two different places. When he first came into the basin he lived at the Ducktown Hotel and later he moved down to the residence of Mr. Lafever in Ducktown. I don't think he ever had any office in Copperhill. I can't say whether I was in his office on April 13th or not, I have been there so much I can't tell you when. I was on the relief committee to take care of the sick, and tried to get coal and wood for the people out on strike and medicine and I wanted Mr. Anderson to know where I was spending the money. I felt like it was my duty to consult him about it. The International Union furnished the money and Anderson was the International Organizer. He had to report the expenditure of the funds to the International because he was representing the International there. I was not an International man, I was in the Union and Mr. Anderson was working for the International and, therefore, he had to know where this money was spent, and I felt like I was spending another man's money and I should consult him. Mr. Anderson was supposed to know where the money went to. When we had

to pay a bill I got the money at the bank, I wrote a check for it. The checks were written by Marion Payne, Secretary of the Local. I don't know whether I was present at a meeting of some kind on April 18th at Anderson's office or not. I have been there so many times I don't know what dates I was there. I would be there four, or five or six times a day. I was never in Anderson's office when Freed Long was there. I was never present in Anderson's office on April 13th or any other time when a conversation was had between Anderson and myself and other members of the Union in reference to dynamiting power towers, or any reference to shutting off the power from the Copper Company. I repeat the conversation with Freed Long. We were in Copperhill Monday the 6th, I believe, sitting in front of Howell's garage, a parking place, me and McGhee in the back seat, Baker and Anderson in the front seat and Henry was standing on the outside. We were sitting there talking and Freed Long stuck his head in on Anderson's side of the car, and he said to Mr. Baker "here is some information" and handed him a piece of paper, names of some witnesses, or something. I didn't pay particular attention to what he said. He said the Marshal had been there summoning him, looking for him, and Mr. Baker asked him "what do you know"? and he said "I don't know nothing." He said, "I don't want to go to Chattanooga to be a witness, he said he didn't know what it is all about, and he said he had $1.50 in his pocket and if we would give him $25 he would come down and testify for us, anything you want me to.

That is what Freed Long said. He probably said come down here and swear, I didn't pay any attention to what the boy was saying in particular. I didn't know such a man was around there, they said it was Freed Long. I know that is what he told Mr. Baker.

(This witness was then excused.)

The defendant, WAYNE HENRY, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Thomas Wayne Henry and I am 28 years old. I am married and was formerly employed by the Tennessee Copper Company. I am a member of the International Union of Mine, Mill & Smelter Workers and believe I joined the union in 1937. I know Freed Long, I have seen him off and on during the past year. I was not at a meeting on or about April 18th or 19th at the Union Hall when Freed Long was present. The way I understand it he was not a union member. I didn't attend a meeting at the union hall on or about April 18th when Martin Simonds and Earl Hubbard, M. C. Anderson and John McGhee and possibly others discussed anything about dynamite or using explosives. If there was a union meeting on April 18th or 19th I guess I attended it. I attended all the meetings. I never attended a meeting when there was a discussion about using explosives in reference to blowing up power lines or mines or blowing anything else up. There was never any arrangement or plan had at any meeting to blow up power lines or towers. I never heard the subject mentioned at any union meetings. I was present on January 6th

when Rans Smith, John McGhee and M. C. Anderson and you were engaged in a conversation with Freed Long. Freed Long came up to the car where we were and told us he had been trying to find us fellows, and he spoke to Mr. Anderson I believe it was, or to you. He came up on Mr. Anderson's side and he said "I have some information here," he said it was a list of witnesses he said the Government was going to have subpoenaed for this trial, I believe I asked him where he got it or something like that and he said deputy sheriff Bill Rose gave it to him, the witnesses he had a list of were Max Dunn, Cecil Payne, both the Woodward boys were on it and Mrs. Woodward. His name was not on there but he said he expected to be summoned next, he said he heard they had been to his house to summons him, but he didn't want to go down there to the trial; he said he didn't have any money, that he might have $1.50 in his pocket now, and he said if you would give him $25 "I will swear for you people"; to the best of my recollection that is what he said.

Cross Examination by Mr. Badgett.

I didn't give a statement to the FBI agents in this case. I was present in the court room awhile ago and heard the other defendants testify. I have known M. C. Anderson about two years. I have seen Freed Long off and on for about a year. He was on the picket line some and his brother was one of the strikers. I am not sure whether his brother came out on strike or not, I can't say. I am not absolutely sure that his brother worked for the Copper Company. I know his father did. I can't say

that Freed worked on the picket line. He was on the picket line but was not assigned to regular duty and not a regular union member. Anybody was allowed to come up there, we had checker games and card games and he was more or less around there. When Freed came to our car he said he had a list of witnesses and he gave the list to Mr. Baker. I saw the list, it was not a long list. I know he said he had a list. He said he had a list of the names of witnesses to be used down here that were summoned and I asked him how he knew and he said Deputy Sheriff Rose gave him the list. He said someone had been to his house and he didn't want to go home and said he didn't want to be a witness for the Government. I was outside the car, talking to the men in the car when Freed came up and he just walked up to the car and stuck—walked right up to the side of the car and stuck his head in the window and said he had been trying to find or see the men in the car, said that he had some information for them. He went on talking about the names there, I guess he stayed there four or five minutes, maybe longer and later Mr. Baker asked him what he knew about the case and he said he didn't know anything and said if we would give him $25 he would come down here and swear anything we wanted him to. I had talked to the men in the car before Freed came up. We were discussing more or less about the trial, and that was in Copperhill, at Mr. Howell's garage. I had not been riding around in the car with the other men. The reason I happened to be there at that particular time, I have a cafe there in town. Mr. Anderson and Mr. Baker stopped and ate lunch and when they got ready to leave I went out to

the car with them and McGhee and Smith were sitting in the car, they didn't eat with me. I don't know where Freed Long lives, I know where his father lives, he lives in what is known as Stewarttown and that is about four or five miles from where we were talking at the car.

(This witness was then excused.)

The witness, LEON HOWELL, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Leon Howell. I am engaged in the automobile business at Copperhill, Tennessee, and have been so engaged for the past six years. I know Felton and Theodore Woodward; have known Felton Woodward approximately six years and Theodore Woodward for about five years and I think I know their general character and reputation in the community and it is very good and from that they would be entitled to full faith and credit on their oath in this court.

I have known Wayne Henry for about four years and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

Cross Examination by Mr. Badgett.

I talked to Sheriff Biggs about coming down here as a character witness. I told him if I came down here what I knew was general reputation up there and I didn't see that I could do anybody any good or hurt anybody because they had been customers of mine and all I could do would be to tell my experience and the general experience of

those in the community. I am telling now my business experience and their general reputation in the community. I also told Mr. Biggs as far as I could tell, the First National Bank Cashier and others that they dealt with could do the same thing that I could. I didn't tell him I didn't know anything about their character. I did tell him, make the remark, that what I knew about them would certainly have no bearing as to what they were being tried for now, because my dealings with them and this are two entirely separate things.

(This witness was then excused.)

The next witness, COLEMAN KEENUM, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Coleman Keenum and I live in Copperhill, Tennessee.

I am acquainted with Marion Ellis, John McGhee, Rans Smith and Meggs Collins.

I have lived in Ducktown for about thirty years and have known Marion Ellis about nineteen years. His general character and reputation in the community up there is good and from that reputation he is entitled to full faith and credit on his oath in this court.

I have known John McGhee for twenty-four years and know his general character and reputation and it is good and from that he is entitled to full faith and credit on his oath in this court.

I have known Rans Smith about twenty years and know his general character and reputation and it is good

and from it he is entitled to full faith and credit on his oath in this court.

I have known Meggs Collins for about ten years and know his general reputation and character and it is good and from that general reputation and character he is entitled to full faith and credit on his oath in this court.

Cross Examination by Mr. Badgett.

I am working with the WPA at the present time. I worked in the mine most of my life for the Tennessee Copper Company but have not worked there in the last ten years.

(This witness was then excused.)

The next witness, M. T. STILES, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is M. T. Stiles. I have lived in Ducktown for the past twenty-five years, except for about six months. I have known Marion Ellis all his life and am acquainted with his general character and reputation in the community up there and it is good and from it he is entitled to full faith and credit on his oath in this court.

I have known John McGhee about thirty years and worked with him in the mines about ten years I guess and I know his general character and reputation and it is good and he is entitled to full faith and credit on his oath in this court.

I have known Wayne Henry about three years and know his general character and reputation and it is good

and from that he is entitled to full faith and credit on his oath in this court.

I have known Earl Hubbard about fifteen years and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

I have known Rans Smith for twenty-five years and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

I own and operate a service station in Ducktown.

I know Freed Long and have known him for about twelve or fifteen years. I am acquainted with his general character and reputation in the community up there and it is bad and from that general character and reputation in the community where he lives he is not entitled to full faith and credit on his oath in this court.

Cross Examination by Mr. Ault.

Most of the men I testified about trade with me at the garage.

(This witness was then excused.)

The next witness, REV. ORG FOSTER, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Org Foster. I am a Baptist Preacher and am now pastor of the Holeville Baptist Church, McKaysville, Georgia, which is right across the line from Copperhill.

I have known Felton and Theodore Woodward since they were boys. My father and their father used to live on adjoining farms in Georgia. I am acquainted with their general character and reputation, that of Felton Woodward, and it is good and from that he is entitled to full faith and credit on his oath in this court.

I have known Theodore since he was a boy and his general character and reputation in the community is good and from it he is entitled to full faith and credit on his oath in this court.

I have known David Queen since 1927 and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

I have known Rans Smith since 1927 and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

I have known John McGhee since 1927 and know his general character and reputation in the community and it is good, and from that he is entitled to full faith and credit on his oath in this court.

I have known Marion Ellis since 1927 and know his general character and reputation in the community and it is good and from it he is entitled to full faith and credit on his oath in this court.

I have known Meegs Collins since 1927 and know his general character and reputation and it is good and from that he is entitled to full faith and credit on his oath in this court.

I started preaching in 1922. At that time I lived in Kentucky. I went to Kentucky in 1921 and stayed until 1927 and came to Ducktown and was pastor of the Main Street Baptist Church. I was Pastor of that for five years and went to Etowah and stayed for seven months and went to Ducktown in 1935 and left there in September, 1940 and went to McKaysville, Georgia.

(This witness was then excused.)

The next witness, HASKIN CHANCEY, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is W. Haskin Chancey, I live at McKaysville, Georgia just across the line from Copperhill, Tennessee, and have lived there about twenty-eight years. I have a little dry goods store there and am Justice of the Peace for that district in Fannin County, Georgia.

I have known Wayne Henry for sixteen or seventeen years and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

I have known Ed Simonds about four years.

I have known David Queen practically all his life and his general character and reputation is good and from that he is entitled to full faith and credit on his oath in this court.

I have known Robert Lee Ballew nine years.

I have known Felton Woodward about seven or eight years and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

I have known Earl Hubbard twelve or thirteen years and know his general character and reputation and it is good and from that he is entitled to full faith and credit on his oath in this court.

I have known Martin Simonds twenty-three or twenty-four years and know his general character and reputation and it is good and from that he is entitled to full faith and credit on his oath in this court.

I have known John McGhee about twenty-five years and know his general character and reputation and it is good and from that general character and reputation he is entitled to full faith and credit on his oath in this court.

I have known Rans Smith about all his life and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

Cross examination waived.

(This witness was then excused.)

The next witness, GROVER JONES, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Grover Jones. I live at Copperhill, Tennessee and have lived there for about thirty years.

I know Wayne Henry and have known him for a year or two and know his general character and reputation in the community and it is good and from that he is entitled to full faith and credit in this court.

I know Ed Simonds and have known him two years or more and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

I know Theodore Woodward and have known him two years or more and know his general character and reputation and it is good.

I know David Queen and have known him four or five years and know his general character and reputation and it is good and from that he is entitled to full faith and credit on his oath in this court.

I know Earl Hubbard and have known him for two years or more and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

I know Robert Lee Rhodes and have known him a good long while and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

I have known John McGhee for five years or more and am acquainted with his general character and reputation in the community and it is good and from it he is entitled to full faith and credit on his oath in this court.

I have known Rans Smith for more than two years and know his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

I am a barber and have a shop in Copperhill, Tennessee.

Cross Examination by Mr. Ault.

The majority of these men I have done work for them. They are my customers and I don't know anything against the men at all. I have never heard anything against them.

(This witness was then excused.)

The next witness, A. A. POSTELL, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is A. A. Postell and I am a farmer, have a farm about ten miles from Ducktown, Northeast and live there.

I have known Meggs Collins all his life, he has lived in my neighborhood for the last ten or twelve years. I am acquainted with his general reputation and character in the community and it is good and from that general character and reputation he is entitled to full faith and credit on his oath in this court.

Cross examination waived.

(This witness was then excused.)

The next witness, FRED BRYANT, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Fred Bryant, I am a farmer and live at Turtletown, in Polk County, Tennessee, close to where Mr. Postell lives.

I have known Meggs Collins for fourteen years and am acquainted with his general character and reputation and it is good and from that he is entitled to full faith and credit on his oath in this court.

Cross examination waived.

(This witness was then excused.)

The next witness, J. P. CHASTAIN, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is J. P. Chastain, I live at Blue Ridge, Georgia, and am an undertaker.

I know David Queen and have known him four or five years and am acquainted with his general character and reputation and it is good and from that he is entitled to full faith and credit on his oath in this court.

I know Robert Rhodes and have known him about ten years and am acquainted with his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath in this court.

I know Martin Simonds and have known him eight or ten years and am acquainted with his general character and reputation and it is good and from it he is entitled to full faith and credit on his oath.

Cross examination waived.

(This witness was then excused.)

The defendant, MARION LUTHER ELLIS, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Marion Luther Ellis. I am 24 years old and am one of the defendants in this case. I never at any

time took M. C. Anderson's car and went to any place and got Freed Long and took him to M. C. Anderson's office. I know nothing about a brace and bit having been in the car I was driving any time at night, I never had one in the car that I knew anything about. I was stopped somewhere around the first of April and searched, but nothing was said to me about a brace and bit being in the car and the first time I heard anything about a brace and bit was the next morning. I was arrested then. I had a brace and bit at my house and that brace and bit was in my house the next day when it was searched, and the officers didn't take it.

Cross Examination by Mr. Badgett.

I was working for the Copper Company at the time of the strike and went out on strike. I know M. C. Anderson and have known him about two years. I worked around him during the strike. I didn't work for him. I was around his office, as such I was on the contract committee and stayed around his office practically all the time. I also drove his car on many occasions and hauled various people in his car. I know nothing about a brace and bit being in Anderson's car but I was in Anderson's car the night of about March 31st when I was searched. I was stopped around eleven o'clock at night and the explosion took place a good while after that. My baby had the bellyache and I was out riding the baby around. I took the child by Anderson's office, my wife was up there visiting a lady he rented rooms from and then we went out to take a ride to relieve the baby's colic. We left home because my wife wanted to visit this lady there and

then we borrowed Anderson's car to ride the colic away. I don't know anything about a brace and bit, I didn't have one in the car, but I did have one at home and I don't know whether there was one in the car or not, but to my knowledge there was not. I don't know anything about any telephone wire being in the back of the car. On the night I was riding around with the baby I picked up a man when I started back to Ducktown, the man was just this side of Copperhill, and I picked him up and took him where he wanted to go. I didn't know his name and never learned his name and have never seen him since. In that district where I live I pick up men that want to go to Ducktown no matter who they are. I never asked him and this was a stranger I picked up that night and it was about ten minutes to eleven o'clock. I will pick up a stranger in that district. I didn't tell the officers that a stranger probably left the brace and bit in the car. I never heard anything at all about a brace and bit until the next morning. I took Anderson's car back that night right after they searched it. It was about eleven o'clock. I didn't hear the explosion and don't know just what time it occurred. While we were riding around we didn't stay on the paved highway all the time. My wife had never been out on that road and we decided to ride out the road and back and this was about eleven o'clock at night. At the time we were on this country road it was probably around ten o'clock. The place where I picked up the hitch-hiker to where the officers searched me was about three and a half miles and I let him out of the car before the car was searched. I let him out about 300

yards from where they searched me. He said he wanted out there, I didn't see the officers coming. The reason I was out on that country road that night was because I was out riding around and I thought it my privilege as an American citizen to ride any place I wanted to and that is the reason I went out. I went out there because I wanted to be out there. We went that way because we wanted to go that way. At the time I let the stranger out in Ducktown I had not seen the officers' car, but I did see the rifle the officer had after I got up there.

Re-Direct Examination by Mr. Baker.

RQ. Since the Government has asked you about it, how many times had you been searched before that time?

Mr. Badgett: I didn't ask about that and we object.

The Court: Objection sustained.

Mr. Baker: We except to your Honor's ruling.

RQ. Had you been searched before that time?

Mr. Badgett: We object to that because it is immaterial.

The Court: I don't see the materiality of it.

Mr. Baker: I would like to have the jury excluded and go into that matter.

The Court: The Court does not think it is competent even to go into the record. Objection is sustained.

Mr. Baker: We except to the Court's ruling.

The brace and bit which you have shown me here is the brace I had in my home at the time it was searched and that brace was in my home the day following the night when the car was searched. (The Government's Exhibit No. 7 to the testimony of Agent Mann (being the

auger) was then passed to the witness, together with the brace.)

The bit, the Government's Exhibit which has been handed to me, will not fit into the brace which I have here.

Re-Cross Examination by Mr. Badgett.

I live by myself, have a family of my own, I am not a carpenter.

(This witness was then excused.)

The defendant, MEGGS COLLINS, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Meggs Collins and I formerly worked for the Tennessee Copper Company and went out on strike when the strike was called. At the present time I work in North Carolina for the Utah Construction Company, doing tunneling work.

On April 18th or at no other time was I ever in a meeting with Freed Long. I know him when I see him but to be personally acquainted with him or have personal contact with him I never have.

I have been in hundreds of union meetings but I never at any time or any place was in a meeting, a union meeting, or had a private conference where anything like dynamiting power lines or the mines or anything else was discussed. I have never been in a meeting where there was any discussion about harming anybody or anybody's property. I just never have been in a meeting of that nature. All union meetings are opened with prayer and closed with prayer.

Cross Examination by Mr. Badgett.

I have been at meetings where some of these other men were present, regular union meetings. I have also been at relief meetings. The relief meetings were not opened with prayer. The only time I have been in meetings with M. C. Anderson, Martin Simonds, Ed Simonds, Felton Woodward, Wayne Henry, John McGhee and Earl Hubbard, I have been in meetings with these boys at different times when there would be maybe 300 or 400 in there. I have known M. C. Anderson since 1937. I got acquainted with him, when he came into the Copper Basin. He has had an office in the Hotel and then he moved about a block down on the road that goes to Harbuck, in Ducktown, and that is the only place he had an office to my knowledge. The place he had the office was in Lafever's house. We didn't have any meetings there at Lafever's house, at least I never attended a meeting there. We never had anything there, except we got together there just in and out. They would write prescriptions for medicines for people out on strike and I would go there to get a prescription or order for wood and coal. I have seen several men around there and several of the men on trial here, including myself. I drove Anderson's car one time, along in the spring or summer. I was working in Alabama this summer, I had a job down there and had seen Mr. Anderson several times when he went to his home at Powderly, Alabama, out from Birmingham, and also near Bessemer, Alabama. I was with Anderson and his family, he was tired and wanted me to drive a while and I guess I drove ten or twelve miles. At that time I was working for Salmon & Cowan, con-

tractors in Birmingham. We were working out from Birmingham about six miles, at Hughietown. At that time the strike was over with and it had been over a year, and that was this past summer. I have ridden in the car with Anderson a number of times during the course of the strike and before the strike but that is the only time I ever drove his automobile. Marion Ellis drove Anderson's car fairly often, just whenever he needed it. Marion Ellis was not any office boy exactly, he was out on strike. He was out on strike. It was not Anderson's strike. I was on the sick committee and I would go to see the men who were sick. Marion Ellis didn't stay in the office and work there any more than me or John McGhee, but Ellis did work around there and drove Anderson's car and ran errands for Anderson. I remember when the dynamitings happened over there, I don't remember just how many there were, I heard about it, general talk by everybody not only strikers but everybody talking in Polk County there. On the night of April 18th I guess I was at home. I didn't go to the meeting that night, relief committee or any other kind. I did go to a meeting around that date, we had regular meetings I believe each Friday and we had another regular meeting at Ducktown hall on Friday and Isabella Saturday and had called meetings between them. We did have a meeting somewhere around about the 18th of April at the Union Hall at Isabella, I wouldn't say it was the 18th, but probably had a meeting that week. M. C. Anderson was present at practically all the meetings. I don't remember whether Martin Simonds

was there or not and don't know whether Ed Simonds was there, or Felton Woodward was there or not. I can't tell you about that particular meeting. I have been to practically every meeting we had but have never been to a particular meeting of the nature you asked about while ago when nobody else was present. The only meetings I attended was regular meetings where maybe there about be 300 men present. I cannot say these men were or were not at some of those meetings probably they were, but I don't remember. I can't tell you whether there was a dynamiting right after that meeting or not. I don't remember the date of the dynamiting which you say was April 24th. I do remember a dynamiting was talked about every time one was blown up, it was talked about around over the country. I worked on the picket line over there but I don't believe I was working on the picket line when the trestle was blown up. I believe we were turned loose, the men in the country, turned loose to let us go home. I guess I was at home on the night of April 24th. I was a diamond driller for the Tennessee Copper Company, as such diamond driller I didn't have occasion to use dynamite. I have had occasion to use it and I know how to use it, but have been a driller and have done lots of other things around the mines. I am an experienced miner and I knew how to light a fuse. I don't know how to set time clocks. I do know about the electric exploder on the job I am on now, we use that. I know where three or four or five magazines were in the Isabella mine, or did five or six years ago when I worked there. I don't know where they are located now. Mr.

Badgett I am going to tell you and the Court that I have never been at a meeting of the nature you discussed or described there, that is where only a few were present. I have been in meetings when all the boys were present, where 300 or 400 men would be present. As far as being in meetings where discussion of any damage to anyone or property was discussed, or mistreating anything or anybody I have never been in a meeting of that kind. I have been in meetings where we talked on lines of relief and things of that kind and how long we could hold out, but as far as doing something to somebody's property or anything of that kind, we did not. I will answer you now directly, I did not discuss with Martin Simonds how much powder it would take to blow up anything. I have never been at a meeting of that kind. I will answer the next question direct, I have never been at a meeting and discussed with M. C. Anderson the feasibility of using clocks to set off powder or dynamite in the Isabella mines or at any other place. You have shown me three clocks here and I will say directly that I didn't construct these clocks and I have never seen them before.

(This witness was then excused.)

The next witness, HOWARD LEE, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Howard Lee, I am Secretary of the Southern Conference for Human Welfare. The office is located in Birmingham, Alabama. We had the last conference in Chattanooga, Tennessee, on April 14th, 15th and 16th, at

the Memorial Auditorium. The paper which you have just handed me is the printed call to the convention, and I will file it as an Exhibit to my testimony. In response to subpoena I have with me the registration cards for the delegates to that convention from Ducktown and Copperhill.

M. C. Anderson, Mrs. M. C. Anderson, Marion Ellis and Van D. Jones were all delegates to that convention.

Cross examination waived.

(This witness was then excused.)

The defendant, M. C. ANDERSON, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is M. C. Anderson and I am 37 years old and have four children. I live in Powderly, near Birmingham, Alabama, and Powderly is a suburb of both Birmingham and Bessemer. I am the National Representative and Organizer for the International Union of Mine, Mill & Smelter Workers and have been connected with that organization since 1933, but have been in field work only since January, 1939. Before I started working for the Union I was working for the Tennessee Coal, Iron & Railroad Company as a skip tender. I didn't use explosives on the job I was on down there and know very little about the use of explosives. On or about March 31, 1940, in Polk County, Tennessee, it is entirely possible I sent word to Felton Woodward instructing him to meet me in Ducktown. I have sent for him to meet me or come to the office numbers of times. He was on the relief committee in charge of relief at Copperhill and it was necessary in

rationing out groceries to the individuals that we keep a memorandum of the groceries and the amount of money spent and in doing that work I had to confer with Felton Woodward practically every day. From July, 1939, until after the strike the International Union of Mine, Mill & Smelter Workers spent approximately $30,000 in the form of relief and in fact is still spending money for relief in the Copper Basin. The relief load ran more than $1,000 a week and as International Representative I was required to account for all that money that was spent there. It was necessary for the various people who were on relief to come to me through the relief committee before the money could be spent and in reference to that I did talk with Felton Woodward almost every day. didn't at any time on March 31, 1940, April 13th or any other date send anybody after Freed Long and have him come to my office. To the best of my recollection he has never been in my office. He is not a member of the organization. I didn't have a meeting on or about April 13th in my office, Freed Long, Rans Smith and John McGhee being present, in which any dynamiting of power lines and mines was discussed. That has never been discussed in my presence. On April 8, 1940, I was in Chattanooga, Tennessee, at the Key Hotel. We had a tentative arrangement for a conference with Dr. John R. Steelman, Director of the Conciliation Service, who was to speak at the Auditorium that night and I was to meet down here with Mr. Jones and as soon as we could get in touch with him we were going to discuss the settlement of the strike. We were trying to get his good offices and get him to use his influence to settle the strike. Dr. Steelman is the head of the Department of Labor Con-

ciliation of the United States, and has quite a number of men working under him. The next morning I went back to Ducktown, which was April 9th. You have shown me Government's Exhibit No. 1 to the testimony of W. J. Hugo. I am satisfied I bought gas on that date, that is my signature on the ticket. I bought gas all the time from Mr. Jones, have since 1937. I do not have any independent recollection of buying that particular order of gas, outside of the ticket which you have shown me. Ordinarily when I start back to the Basin from Chattanooga I always fill my tank with gas. I can't buy high-test gasoline at Ducktown and that was the only kind I use. I never had a meeting with Freed Long on or about April 13th or at any other time.

I am acquainted with Mr. Payne and that is his handwriting. The book which you have shown me is the Minute Book of the Ducktown Miners Union. We had three Local unions in the Copper Basin, Local No. 176, Local No. 183 and Local No. 184, one at Ducktown, one Copperhill and one at Isabella and this is the Minute Book of the Ducktown Local. This book is regularly kept by the Secretary as part of the records of the Union. I have credentials and authority to inspect the books and records of the Secretary and I do regularly inspect the books and records of the Secretary, and have inspected this book before at various times to see if it was kept in the proper way and also used it for information with the National Labor Relations Board. M. Payne, whose name is signed to that was at that time Secretary of the Ducktown Local and this book is in his handwriting. The entry for April 18th is as follows:

"April 18th, 1940, Ducktown Miners Union met in regular session, R. M. Morrow, presiding. Meeting opened with prayer. The following bills ordered paid: Stamps 74 cents, office and keys 50 cents. Several talks for the good and welfare. Meeting adjourned with prayer. M. Payne, Secretary."

Those meetings usually lasted an hour to three hours, depends on how long the people talk. The meetings were usually held in the afternoon and whenever I was present in the Union I always attended the meetings when I was in the Basin.

The Ducktown Union had a meeting on April 12th and one on April 5th and one on April 26th.

The book which you have handed me is the Minute Book of the Isabella Local No. 184 and is the regular minute book of that Local, kept in the usual course of business of that Union. I recognize the handwriting in it and know that it is the Isabella minute book. The Isabella Local had a meeting on April 19th at the union hall. The minute entry is as follows:

"Isabella Local No. 184 met in regular session April 19, 1940, President York presiding. Meeting opened with prayer by Brother M. Payne. Report of sick committee—none. Brother Anderson reports some about some quitting picket lines because of not getting enough to eat. Brother Mark Collins on strike fund—explaining different facts concerning groceries and asked that everyone attend the picket lines and cut wood for something in the line of relief. The subject of J. E. Berger was brought up. It had been reported he had advised his boys to return to

work, also that the strike was lost. After much argument Brother A. J. White preferred charges against J. E. Bigger, Secretary of Local 184. The following trial committee was appointed: R. H. Nichols, Reed G. Hopkins, P. G. Abercrombie, F. W. Hughes, Robert Bell. Representative M. C. Anderson being present made a good talk, Various expenses approved. Meeting closed by Brother E. E. Wadruff, acting Secretary."

When charges are preferred against members of the Union a trial committee is appointed in the usual course of business and is provided for in the Constitution of the Union. According to this record the Union had a meeting at Isabella on April 12, 1940. The next meeting was on June 15, 1940.

At no meeting I ever attended, any union meeting, nothing was ever said by anybody at any of those meetings at any time about blowing up the Copper Company or TVA lines or anything of that kind. We never had private meetings where that was discussed, where just a few of us would get together. I never at any time instructed any of these men, the defendants or anyone else to dynamite power lines or the mines. I never gave anybody any dynamite to do anything like that with; I never had any dynamite in my possession at Ducktown, Copperhill or anywhere else, or caps or fuse and I never had any clocks wired up to explode anything with. I never had a brace and bit or augers up there around the office and I didn't furnish anybody with a brace and bit or augers and never saw one around the union office. I never told anybody would get an auger to bore a hole in the power

poles and the auger the Government has exhibited here in the court room is one I never saw before the preliminary hearing in this case. I know nothing about it at all.

Cross Examination by Mr. Badgett.

I have been in the field as Southern Representative since January, 1937, and prior to that time I worked for the Tennessee Coal, Iron & Railroad Company and I was President of the Local Union there for about three years. I refused to go back to work with the Tennessee Coal, Iron & Railroad Company when we went back to work, when I was called, and I told them I had another job. We came out on strike and I didn't get another job and when we were called back I didn't go back. The place where I worked for them is Ishkooda, which is about six miles from Birmingham and I got a job as a Union Organizer right after that strike. There was no dynamiting down there that I know of. I know nothing of any property of the Tennesee Coal, Iron & Railroad Company being destroyed by dynamite and know nothing of any homes being dynamited during that strike down there. I have lived in Bessemer or near Bessemer since 1917. I moved away from Ishkooda, I believe in 1925. I now live at Powderly, Alabama, which is about a mile and a half from Ishkooda and all the places I have lived since 1917 is within a radius of 20 miles, less than 20 miles. I went in the field in 1937 and, of course, I had to go wherever I was assigned to and I think I went to Mt. Pleasant, Tennessee, to organize a group of miners there. I did organize them. I have been to Ducktown, Mascot and Jefferson City. My purpose in going to those places was to

assist in the organization of the Union wherever they called for a representative. I went to the Copper Basin at the request of the Local Unions, they requested the International to send someone in and I went in. First I believe C. L. Pegues went in there. He was a representative and then I went in and both of us were there for a while. A group at Copperhill had filed a petition with the National Labor Relations Board for election or certification and there was a hearing held and election was set up and we went in and represented our group of people, the members of our organization and that was my purpose in going to Ducktown in the first place and, of course, I wanted to get every man on the job to vote for the International Union of Mine, Mill & Smelter Workers. The strike was called about a year and a half after I got there. I know Bessemer fairly well and I have been to the Hercules Powder Company one time. I have been there since the preliminary trial of this case and I don't remember that I was ever there before. Mr. Baker and Mr. Lipscomb and I went out to the Hercules Powder Company a short time ago and I don't remember ever being there before. I wouldn't think that the Hercules Powder Company was one of the largest industries in Bessemer. I did know where it was located by hearsay, I knew some men who worked out there. I never took Felton Woodward down there and showed him the Hercules Powder Company. Meegs Collins at one time did go to Birmingham with me, has been at my home, and stayed in my home a day or two. John McGhee has been down there with me; Marion Ellis has been down there and I believe that is all. I carried these men with me when I would go down there,

for my protection in coming out of Polk County. I expected to get ambushed every time I came down the River Road and took them along as bodyguards. I carried Marion Ellis and his wife with me and generally I would get a man and his wife along with others to go with me. I generally had some woman coming down whenever I left out of the Basin. I figured they wouldn't shoot into a car with a woman in it. I took the men along because I wouldn't take some woman, or ask some woman to get in the car with me to protect me. I wouldn't do that. At that time I believe I carried a man named Gaddis and his wife with me, I took them along for protection.

Marion Ellis was also a friend and I asked him to go to Birmingham with me as a friend. I didn't like to ride so much by myself. Possibly all the men on trial have been in my office and some besides those, in and out of the office. I had an office in Ducktown. The first office was at the Ducktown Hotel. I next rented a couple of rooms from Bill Hedding, just—whose house was next door to Mr. Lafever's house and then I moved into Lafever's house and that is the last office I had. I had a bed room in connection with the office at Heddings. I never took any of these men back in the bedroom and talked to them. It is possible some of the men have gone into the bed room from the office, I didn't take any of them in there and I don't recall seeing any of the men in the bed room. I was not in charge of the strike. Part of the time I was the only representative of the International there and at the time of the dynamiting I was the only representative. I was not in charge of the strike, the Local Union is in charge of the strike and I was there merely to assist

in anything I could. I handled the money of the International as I was responsible for it and I was assisting in negotiations. All the money that came in to the Copper Basin was sent directly to me, the check was made to me and placed in the bank and I was under bond for it. I turned it over to M. Payne and he put it in the bank. I was representing the men in the negotiations and I was interested in the settlement of the strike. On the night of April 8th, I was at the Key Hotel at Chattanooga, Felton Woodward and his wife went to the Court House to hear Dr. Steelman talk with my wife and me. Felton Woodward and his wife came by my room at the Hotel before we went up to the lecture. Usually all of the boys who come to Chattanooga knew I stopped at the Key Hotel and they would come to see me when they were there and Felton Woodward and his wife came back and went to hear Dr. Steelman speak with me. I don't recall if they came back to the Hotel with me after the speaking. It is possible they might have and they might not. I don't recall that. The reason I say I don't know whether Felton Woodward came back to the Hotel is because Mr. Jones and I and Commissioner Williams and Dr. Steelman were in conference after this speaking and that is the reason I don't remember them coming back to the Hotel, because we stayed in conference with Dr. Steelman and Commissioner Williams. Van Jones was checked in to the Hotel also and he went to the speaking with me. Van D. Jones is Executive Board Member for the Union and is an elected official and is my superior. He came from Birmingham and to attend the conference with Dr. Steel-

man. I did not go to the filling station at the corner of 10th and Broad Street, and take Felton Woodward with me on April 8th or 9th and I did not meet Felton Woodward at that filling station, and I didn't take out of Jones's car or anybody else's car a burlap sack which contained dynamite and transferred it to Felton Woodward and tell him at the time it was a sack of potatoes, that just never did happen. I know I didn't do it.

The Union at Ducktown had a meeting on April 5th, 12th and on the 18th, 1940, then the next one was on the 26th of April. This is the complete record of the meeting on April 18, 1940, at Ducktown so far as Mr. Payne kept the minutes and he was the man who kept the minutes. He merely put down the substance of the meeting. The item here "talks for the good and welfare" would mean making a talk with regard to the Union organization and good and welfare could be concerning relief. That was usually put in the minutes. You will find it in the minutes before the strike. This was a regular session or regular meeting of the union and they had a meeting once a week, the Local Unions set their own meetings. I said this was a regular meeting on April 18th. The local union has the right to set their own meetings, they also call special meetings. The minute book will show you what the special meetings were called for. The minutes of Febuary 27, 1940, wherein some statement is made as to the status of the case, means the case of those pending before the National Labor Relations Board. I probably made a talk at the meeting on April 18th at Ducktown. If I did I would explain that we were trying our best to get relief for the men and take care of the women and children and that

would be under good and welfare of the union. It was right along about that time that Mr. Bob A. Hampton and all of us were trying to get the school, the Ducktown school, to give those children out there something to eat, instead of a bowl of soup, because they were striking, which was taken up. There were various talks for the good of the organization and that is what we call good and welfare. I might have mentioned the strike in the course of the talk. I didn't mention anything about plans for the progress of the strike, because I couldn't do that, I didn't have plans and don't make plans. That is the Union's business and it is their business to carry on the strike. I assist in the negotiations and handle the relief and relief money that goes in there. We had a regular meeting at Isabella on April 19, the next regular session was April 27th. The Books show April 19th and 27th, that would be eight days between regular sessions. The session before the one on the 19th was on April 12th and the one before that on April 4th. The minute book shows the next meeting after the April 27th meeting was June 15th.

I am acquainted with Felton Woodward and I know all the defendants on trial now. I did not know all of them personally before they were arrested. In fact some of them I had not even seen. I knew John McGhee, Marion Ellis, Rans Smith, Felton Woodward, Meegs Collins and Wayne Henry and I knew Sweat Woodward, David Queen and Robert Rhodes and numbers of the others. I also knew Ed Simonds. I think I had seen Martin Simonds at meetings but personally did not know him. I never sent Marion Ellis to bring any man to talk to me. I did send him out to get a man to talk to the Field Examiner of the

National Labor Relations Board and he used my car when he went out after them. Mr. Spencer was the first Field Examiner for the Labor Board and John R. Smith was the other. I now say it is possible I might have sent after Felton Woodward on March 31, 1940, I sent for him at different times in regard to the relief. I sent for him when I was living next door to Lafevers and also when I lived at Lafevers and also at the Hotel. I think I was living at Lafevers on March 31st. I didn't give Felton Woodward any instructions at my office at that time or any other time to make arrangements to dynamite the power lines of the TVA. I had no discussion with him in reference to powder and stuff and I didn't tell him anything about the powder. I never had any meetings with the defendants just in little meetings. We had regular meetings from time to time and I discussed the relief problem at times and we did that at different places, whether at my office, Ducktown, Copperhill or Isabella and I spoke to some of these defendants and talked to them from time to time and I guess from time to time I did have conversations with groups of them, not only the defendants but with others. I didn't at any time suggest to or tell Felton Woodward to drive to Chattanooga and get some dynamite that I had in my car, and no conversation was had about the tires being bad on Felton Woodward's car and I didn't give him $10 to make the trip. I didn't have any dynamite in my car, I had just come from Ducktown at the time I was at the Key Hotel on April 8th. I never told Felton Woodward to go buy any dynamite and I never told him about any route to take, I never told him about any dynamite at the time. Felton Woodward never came to my office or any other

place and say to blow up the wooden power poles it would be necessary to have a brace and bit and I didn't tell him that could be arranged at any time. I did telephone Felton Woodward numerous times and it is possible four or five days before March 31st, I telephoned him, but I didn't talk to him anything about dynamiting or blowing up lines, power poles or towers. I don't know anything about a meeting in my bed room with John McGhee and Rans Smith and Henry Cochran, I didn't have those men back in my bed room, and I didn't tell them I would make arrangements, get the powder and fuse. I never had such a discussion with anybody. I never had any discussion with Marion Ellis about dynamiting power lines or with Felton Woodward. I don't remember telling Mr. Roche when he questioned me here in Chattanooga that I had not seen Felton Woodward since the trial of the injunction case in Federal Court which was in March, 1940. He was cussing me so much I can't remember what was said. He was calling me a liar and cursing me all the time. I don't remember about any certain person but he, Roche, told me he had written statements from nineteen men and showed his files and I said that doesn't make any difference, because I haven't done anything and all I want you to do is allow me to see a lawyer and bring the case to court. I didn't get a lawyer then and didn't get one until after I got in jail. I didn't make a statement, I didn't have anything to make a statement about and I don't recall as I said to Mr. Roche that I hadn't seen Felton Woodward since March. I don't believe I told him that. When Roche was cursing me, Broughton Biggs and Agent O'Conner were there, Plaxico came in and told me, says damn you

we have ways to make you talk. Roche called me a damn liar every time I tried to speak. That conversation was right down here at the end of the hall in the FBI office. As a matter of fact I had seen Felton Woodward since the injunction hearing in March, 1940. Several days before the second dynamiting on April 14th I didn't have a meeting at my office in which there was any discussion about putting out the lights again so the men could go in the mines. I didn't have any meetings in my office, that was the Local business to handle the meetings in the Union Hall. There were people coming in and out of the office at all times, various ones, they would come in to see me and wives and children of the strikers would come in there, they came to get medicine and didn't have money to buy it with and we had an account at the drug store. I told you we didn't have meetings in my office. We didn't have any meetings in regard to dynamiting at any time. There would be lots of men in my office from time to time but I don't call it a meeting, talking over the relief situation, how we were going to take $100 or $200 and divide it amongst 200 or 300 people and their dependents. As I said before I don't remember whether Felton Woodward came back to the Key Hotel after the speaking on April 8th, I don't think so, because I told you Mr. Jones and I had a conference with Dr. Steelman after the meeting further I never made a statement to Van Jones, Felton Woodward or anyone else about any fuse, powder, caps or anything like that. I never made any suggestion at any time that they or anybody else should go down to the Hercules Powder Company and get some more powder and fuse and I didn't tell Felton Wood-

ward to meet me at a Gulf Filling Station to transfer any dynamite and he didn't meet me at a Gulf Filling Station and I never saw Felton Woodward at that filling station at any time. I did know that these dynamitings had occurred up there, it was the general subject of conversation around the community. At our Union meetings we didn't discuss anything about the dynamiting, the dynamiting was not talked about at the union meetings, and nobody said anything about the dynamitings, and that if we kept it up somebody will blow it down and we will get a settlement of the strike. If a man had made a statement of this kind at a union meeting he would have been ruled out of order and been put out of the meeting. If that had happened the minute book would probably show a motion, or notation that it was ruled out of order. According to the minute book I was present at a union meeting at Isabella on April 19th, when more than Martin Simonds, Ed Simonds, Farl Hubbard, John McGhee and Felton Woodward were present. I don't remember everybody who was present. The men's names mentioned might have been there and might not, it was an open meeting and there was a large number of men there. This was a regular union meeting. It was not decided at this meeting to blow the power lines and there was no discussion that Ed Simonds was to handle the Blue Ridge end, there was no discussfon about anybody handling the Blue Ridge end, and there was no discussion that the two Huffman boys would handle the Parksville end. There was no discussion of any kind about dynamiting at this union meeting. There was not a meeting on April 13, 1940, at my office in which Freed Long was present. I didn't know Freed

Long. I was not in charge of the picket line, there were different picket captains, one at each place. They were not under my supervision, they were under the Local Union's supervision. You were trying to say in your question they were under my supervision, I will tell you again that the Local Union has its own set up, and they elect their own officers and appoint their own committees. I don't have any authority to supervise anybody, I was only assisting, and it is a democratic organization. It was not any of my business who they were appointing and what they were appointed for. I was just there to advise them and help handle the relief. There is a Constitution to go by and naturally that is what I went by. I never had a discussion with John McGhee and Rans Smith about three electric clocks. I never had an argument with Meggs Collins about the advisability of using clocks to set off an explosion. No such conversation as that was ever had.

Re-Direct Examination by Mr. Baker.

Along toward the latter part of April the three Locals in the Copper Basin started to have joint meetings. There was a joint meeting at Isabella on May 5th, at the Union Hall; there was a joint meeting on May 10th at Isabella; there was a joint meeting on May 22nd at Isabella. I was present on or about January 6, 1941, when a conversation was had with Freed Long at Copperhill. You were present in the front seat with me and Rans Smith and John McGhee were in the back seat and Wayne Henry was standing at the side. The conversation as I recall it was as follows:

Well, he came up to the side of the car and I had the glass rolled down on the left-hand side—he came up to the side of the car and had a little slip of paper—a little piece of paper in his hand, and says, "I was looking for you fellows—looking for you," and he said, "here is the names of some witnesses," and he says "they are looking for me to subpoena me," and says "I haven't got but $1.50" and says "if you will give me $25 I will go down there and testify to anything you want me to," and so Mr. Baker taken the little slip of paper, and in the meantime I taken out my little memo book and copied the names down that he gave me.

I was arrested on the 29th day of April at the Key Hotel, by Broughton Biggs and Mr. Roche. At that time I was on my way to attend a conference to try to settle the strike. I had been in conference that morning and we were going back to resume the conference that afternoon. I was taken from the Key Hotel to the FBI room here in the post office. I was kept in the room at the post office until around 6:30 or 7:00 o'clock that night, a total of about four or five hours. I had before these dynamitings conferred with J. B. Frazier, United States District Attorney of this District in reference to certain law violations in the Copper Basin. The last conference I had with him as I recall was on April 23, 1940. On that occasion I was trying to get General Frazier to send Federal Bureau of Investigation men into the Copper Basin to investigate these violations of the law. I wanted him to investigate violations of the law against interstate transportation of strike breakers and guards. Prior to that time I had had other correspondence with the At-

torney General of the United States and appealed to him for assistance in reference to the same matter, in reference to the violation of the civil rights in the Copper basin. I received this letter from the office of the Attorney General of the United States in reply to the correspondence and I will file this as Exhibit No. 1.

I was requested to move out of the Ducktown Hotel, because of so many people coming in and out that it disturbed the other guests in the Hotel. My wife stayed there with me a part of the time in Ducktown and she rode around with me some in the car.

Re-Cross Examination by Mr. Badgett.

My wife rode around with me for protection, yes.

Freed Long talked to Mr. Baker and all of us on January 6th, on Monday. I wrote down the list of names that he gave me, wrote them down myself. I put someone else on the list here because that was on the copy of what he had. I don't recall any comment being made about the list of witnesses except that Freed Long said he didn't know anything. Of course Mr. Baker had asked him what do you know and he said I don't know anything, and said if you will give me $25 I will swear anything you want me to swear and Baker said we don't do that kind of business. Freed Long came down the street of Copperhill. He came up and said he was looking for us and said here is a list of the witnesses they have subpoenaed and said they had been to his house and wanted to get him and I wrote down the list of witnesses he gave. I don't think I made any comment at all. Mr. Baker sufficiently answered his question.

Mr. Baker didn't comment about the list of witnesses. I don't believe he made any there, we might have talked later. I took out a book and put down the names of the witnesses on account of his coming up and offering information that didn't concern us, naturally I would be suspicious, I would be suspicious of you or Mr. Baker or anyone else, after being grabbed up for the first time in my life and put in jail.

I knew it was not our witnesses and I didn't know anything about him being a witness, he just came up and said that. I had already written down the names of the witnesses when he said he didn't know anything. When he handed the list in naturally I would write it down. He said he wanted the paper back and naturally I wrote the names down. Nobody was supposed to bring me a list of Government witnesses. I was not particularly interested in knowing who the Government witnesses were. I told you I was suspicious of him, if anybody would come and tell me about the Government's case or anything like that naturally I would be suspicious. I wrote the names down because those names were on the paper and he wanted the piece of paper back. He took the paper back. No comment to the best of my recollection was made by Baker or anybody about the list of witnesses there, the name of Sweat Woodward was on there as a witness, and he is a defendant in this case, and he was listed as a Government witness and I understand he got a subpoena. I understand the Government did, as a matter of fact, subpoena Sweat Woodward as a Government witness.

Mr. Baker: The paper you have just passed me is a Government subpoena for the defendant Theodore, Sweat, Woodward.

The defendant, JOEL MARTIN SIMONDS, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Joel Martin Simonds and I am 50 years old. I live in the edge of North Carolina, next to Copperhill in Cherokee County. I have lived there all my life and formerly worked for the Tennessee Copper Company. I went out on strike with the others when they did. I never attended a meeting anywhere in company with anybody else on or about April 18, 1940, wherein it was discussed about blowing up power lines. I have never been in a meeting where dynamiting power lines and mines were discussed. I don't recall whether I was at a Union meeting on the 18th or 19th of April. It is possible I was there. If I was there there was no discussion about dynamiting. I never had any dynamite around my house any time and never gave anybody any dynamite at my house. I never loaned anybody a shot gun during the course of this strike. I was arrested on the 26th of April, 1940, at my home in North Carolina. Mr. McCabe and a man named Morgan came over there after me. They are Agents of the Federal Bureau of Investigation. I have seen them both here since the trial started. There was a deputy sheriff from Polk County with them and he actually arrested me. As soon as they arrested me they put me in a car and drove over to Copperhill, Tennessee. At the time I told them they were going in the wrong direc-

tion and told them if they wanted to put me in jail they ought to take me to Murphy, North Carolina, or some Justice of the Peace and the deputy sheriff said they were going to take me to Tennessee to Copperhill. Morgan, McCabe and deputy sheriff Dale and I were all in the car together.

I only told them one time to take me to Murphy and that was when we were driving out to the main highway and they turned towards Tennessee and I asked them to take me to Murphy or a Justice of the Peace. The justice of the peace lives about a quarter of a mile from where I live and I asked them to go down there and they said they were taking me the other way. When they got me to Copperhill they didn't take me before a justice of the peace and didn't charge me with any offense, I didn't know what I was charged with and I didn't know why they were putting me in jail. When I got to Copperhill they took me to the YMCA building and I stayed in custody there. I was never in the city jail. I was questioned by four or five or six of these FBI men and it would be hard to say for how long a period of time, but a good many hours. During the course of the questioning Mr. McCabe took ahold of my ears and told me, pushed me back towards the table. He wanted me to sign a statement and also an order to get into a locker I had at home and he hurt my ear. Mr. McCabe called me a damn liar and a damn lying son-of-a-bitch. I don't recall Mr. Morgan cussing me. Mr. Hevron, another Agent, called me a damn lying son-of-a-bitch. I was questioned at night and on one occasion was called out of bed at sometime

after 12:00 o'clock, at night, and I got out of bed, and was questioned approximately three hours and was questioned by Agents Hevron and Lunsford and they identified themselves as members of the FBI. After I got to Chattanooga on the 30th of April I found out what I was charged with, no complaint or warrant had been served on me before that time and I hadn't been taken before a justice of the peace or United States Commissioner or anybody else. From the 26th to the 30th I stayed at the YMCA and there were a lot of deputy sheriffs stayed there also, I would say around thirty and one stayed with me all the time.

Cross Examination by Mr. Badgett.

I live in North Carolina, have a garage there. It is down on the road from my house. None of these defendants came to my house on April 22nd or any other time and left any dynamite there and none of the defendants came back later and got any sticks of dynamite to dynamite power towers with out of my garage. I didn't see Ed Simonds, Robert Ballew and Robert Rhodes and David Queen on April 22nd, they didn't come to my garage and take any dynamite out of it. Agents McCabe and Morgan came and arrested me, I think it was McCabe, I don't know for sure. I was arrested by a deputy sheriff from Polk County, the FBI agents didn't arrest me, but they were with this deputy sheriff and he told me I was under arrest, told me he was taking me to Copperhill on the Tennessee side. The conversation came up about my wanting to go to Murphy because that was where I lived and I thought I was supposed to be taken

there when arrested and I told the deputy sheriff that, that I was supposed to go before a justice of the peace or somebody in Murphy if they wanted to put me in jail. I had a boy who committed suicide. I was not in an affable state of mind when the FBI men came out and arrested me and didn't take them out and show them my property and around my house. I didn't show them anything. I didn't take Agent McCabe and Morgan out on my property and in a friendly way show them the property. I didn't take them to any point. Such a thing as mentioning the place where the boy committed suicide was not brought up and I didn't mention to any of the FBI Agents that my boy had committed suicide and I don't know how they knew about it. Five FBI men questioned me, McCabe, Morgan, Hevron and two others, I don't know their names, I believe one was called Lunsford and I don't know the other one's name. McCabe is the one that pulled my ear. I was sitting at the table and he asked me to sign a statement and an order to get in a locker at my home and I told him I wouldn't, I tried to move back and he took ahold of my ear and hair and pulled me back toward the table and told me to sign the statement and I refused to sign it. I didn't have my glasses on and I couldn't read the statement but McCabe said it was a statement. He said it was a statement about blowing up the power lines and about my implication in it. He wrote out something there and told me he had the statement there ready for me to sign. I didn't tell him anything. I told him I knew nothing about it, but he said it was a statement and it was about my im-

plication in blowing up the power lines. Mr. Morgan and Mr. McCabe when they come to my home in North Carolina didn't tell me I didn't have to go with them unless I wanted to. They didn't tell me if I would go that they would appreciate it. That is not the way it was: Ed Simonds spent the night with me sometime in April, 1940, I don't recall the date it was and don't remember if it was a rainy night or not. It was somewhere along about the latter part of April. The next morning after the night he spent with me some men didn't come to my house. Ed Simonds didn't meet anybody there the next morning, and no men went to my gargage and got any dynamite, there was nobody there but Ed Simonds. Ed Simonds lives in Copperhill, Tennessee, which is about five or six miles from where I live. He has a house of his own and married and has a family and he didn't bring his family with him the night he was there with me. The men who arrested me didn't tell me what I was charged with; I didn't get to see anybody to talk to to try to find out what I was charged with, and I didn't see anyone except officers. Agents McCabe and Morgan didn't tell me what I was charged with but they did say they had a statement about the dynamiting and I still say I didn't know what I was charged with until I got to Chattanooga. I saw some of the other defendants there in the YMCA building at Copperhill but I was not allowed to talk to them. There was a guard right beside me all the time and I was not allowed to talk to anybody. I got my meals at the YMCA and ate the same place the officers ate. When Mr. McCabe called me a damn liar

he asked me in regard to my nephew Ed Simonds and them being up there talking about powder and stuff. I told them they hadn't been there, hadn't taken any powder from my garage and he called me a damn lying son-of-a-bitch. He also called me a damn liar on the other occasion, he called me that several times. He called me a damn liar and a damn lying son-of-a-bitch several times and he called me that because he was trying to get me to say some of the fellows had been up there and when I would deny it he would call me a damn liar and damn lying son-of-a-bitch. He was trying to get me to confess that someone was up there and he would use that language. When he was calling me a damn liar and other names was on the night of the 26th of April, the evening they had arrested me. Lunsford and Hevron were the ones who took me out at midnight and questioned me for three hours or more. I repeat, the reason they called me these names was because they were trying to get me to admit that these men had come to my house and also about being at Anderson's office. They asked me so many questions it would be hard to tell it all. They told me that they knew Ed Simonds and these other men had been to my house and I would tell them that wasn't true and they would call me a damn lying son-of-a-bitch and a liar. I identified Mr. McCabe there as the man who called me a damn liar and a damn lying son-of-a-bitch. The little fellow there in the middle who you brought in there used that language, Mr. Hevron. One of the others did but I am not positive about the other man. Mr. Morgan there went up and questioned my family,

my wife and children. I was arrested by a deputy sheriff. He was on the outside of the house, and he was in the car as we went back. I don't think that gentleman called me anything, he didn't curse me that I recall. There was another agent of the FBI cursed me but I am not sure which one he was, it was probably Lunsford, but I am not sure. Lunsford called me a God damn liar and possibly a God damn lying son-of-a-bitch. I am not sure whether he is the man or not. McCabe got me by the ear and hair and pulled me back to the table and asked me to sign some papers and I told him I wouldn't sign them and started moving away from the table and he shoved me back to the table, pulling my ear.

Re-Direct Examination by Mr. Baker.

On the occasion when I was arrested in North Carolina Clyde Dale drew his pistol out but he didn't point it at me, had it in his hand. I didn't get to talk to anybody with exception of Agents of the FBI and deputy sheriffs all the time I was in the YMCA building. I didn't see any outsider at all during that period of time. I didn't see any women come in the YMCA there. I asked for a lawyer, told them I wanted to talk to a lawyer, that I wouldn't talk to them until I had an attorney present. In reply to the request for an attorney Hevron laughed at me and asked who I wanted, or did I want him to call New York and get some one, he called some name out there and asked me if I wanted him to call him. I don't know whether he was a lawyer or not.

(This witness was then excused.)

The witness, C. A. WHITTEN, being re-called for further cross examination, testified as follows:

Examination by Mr. Townsend.

I observed the man on the witness stand a minute ago, Ran Chastain. I recall having a conversation with him sometime ago in the Copper Basin. I remember absolutely telling Mr. Ran Chastain we were not interested in convicting, not convicting but learning the identities of all who were involved in the dynamiting of the power towers, and particularly those who were responsible for it, and the leaders. I don't believe I said it, used the word convict in that conversation, because that is not in the province of my authority. I was interested of course in seeing all who were guilty convicted and I am still interested in that. I didn't remind Ran Chastain that he had been out on a strike a long time and didn't tell him he hadn't been making any money for some time. I certainly didn't tell him about any opportunity to make some money. I didn't tell him if he would join in with me and give me some confidential information that nobody would ever know anything about it and that we would be able to make it worth his while. I deny saying we would make it worth his while. Mr. Lunsford was with me when I was talking with him. We only had one conversation with Ran Chastain, we were both together, we talked to him at the car and I believe later in an automobile. I believe the Sheriff got him for us, called him up to the car.

(This witness was then excused.)

The witness, JOHN E. LUNSFORD, being recalled by the defendants for further cross examination, testified as follows:

Direct Examination by Mr. Townsend.

I saw the man upon the witness stand a moment ago and saw him up there in the Copper Basin but didn't know what his name is. I now know, he is Ran Chastain. I talked to him in the Copper Basin during the investigation of the dynamiting. I didn't remind him in the conversation that he had been out on a strike a long time or that he was in need of money on account of having been out of a job so long. I didn't tell him that was a good opportunity for him to make some money. I didn't tell him if he would just go along with me and give me some confidential information that nobody would ever know anything about it and that we would be able to make it worth his while. Mr. Whitten didn't make such a statement to my knowledge and I was present with him.

(This witness was then excused.)

The witness, RAN CHASTAIN, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

I identified Mr. Lunsford and one of the agents of the Federal Bureau of Investigation that talked with me in the Copper Basin during the investigation of certain dynamitings last year. In that conversation Mr. Lunsford reminded me that I had been out on strike for a long time and suggested on account of my having been out of work for a long time I was in need of money. He told me

if I would assist him in the investigation and give to them confidential information that they would be able to make it worth my while. He said now is the time to make some money.

Cross examination waived.

(This witness was then excused.)

The witness SID HOWELL, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Sid Howell and I live in Copperhill, Tennessee. I am Felton Woodward's father-in-law. I recall the occasion when he was arrested and put in the YMCA at Copperhill. I was not called or told about it. I made an effort more than once to see him. First I went down to the YMCA where he was supposed to have been. I don't know whether he was there or not. I am just telling you where he was supposed to have been, and I asked Mr. Rose, and I don't know, Flavors was a deputy sheriff, and I asked if I could see Mr. Woodward and he said no there wasn't anyone allowed to see him at all, that they had orders from the FBI men for no one to see him. The best I remember, I want to tell the truth about it, that was on Thursday and I think he was arrested on Wednesday and this was on Thursday. Friday I went down to see him and seen Creed Brock, another deputy sheriff and I asked Creed Brock could I see Felton Woodward and he said that they had him under arrest and that no one was allowed to see him at all, that they was questioning him and no one was allowed to see him at

all and I believe that was Friday and the best I remember I was at the City Hall in Copperhill, City Hall, the best I remember at this time, I believe it was Saturday, I went down to the City Hall and I got inside the City Hall at that time and there was a little peep hole out in the wall of this city hall and those boys Felton Woodward and Sweat Woodward was inside in jail, in the cell, inside the cell there the way their voices sounded to me. He recognized my voice, me being inside the city hall and they spoke to me some one of them, I don't know which one it was, said there is Mr. Howell now and I recognized their voice, whichever it was at that time, and Felton spoke up I believe. I asked this guard at the place, I can't recall who it was at this time, asked him if I could talk to them through the wall, yet I hadn't seen either one of them, didn't see either one and if it is necessary I can tell what I said to them. After beginning the conversation I asked the guard if I could talk to them, after I recognized their voices and he said go ahead and talk to them, but I didn't see either one of them. Roxie Campbell came to me and said he had a letter from Sweat Woodward, and Mr. Campbell gave me a letter from Sweat Woodward.

Cross examination waived.

(This witness was then excused.)

The witness, E. B. BAKER, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is E. B. Baker, and I am one of the attorneys for the defendants on trial. I was employed to

represent these men on the 29th day of April, 1940. I do not know where the defendants were when I was employed and did not know then. The first time I got to see them was on the 2nd day of May. The first time I got to see the defendants at all was on the 30th day of April, at the Hamilton County jail. It was the commitment hearing and Commissioner Anderson was present and it was about 3:30 in the afternoon. When I started to go in the detention room one of the Marshals or FBI men, I don't know which it was, told me I couldn't go in there. The man I am talking about came out of the bus that the defendants had been in. I cannot identify him. After some discussion Commissioner Anderson said it was a regular commitment hearing and I had a right to be present and instructed the jailor at the jail to let me in and I went in. After I got inside the room Agent Mann was there, he had a little book in his hand and had the names of all the defendants written on a book and he got this book out and recommended to Commissioner Anderson that all the defendants with exception of five be placed under $3,000 bonds and the others under $1,000 bonds. Felton Woodward and Ed Simonds were two of the men that he wanted placed under $1,000 bonds. M. C. Anderson was taken into custody on the 29th of April. Mr. Robert C. Hunt, another attorney in this case and I came to the Marshal's office here in this building and sat out there in the Marshal's office from 12:30 to 5:30 in the afternoon on the 29th in an effort to see M. C. Anderson. I asked Mr. Plaxico if I might see him and he said they were talking to him there and when they got through maybe I could see him. Finally, after waiting that length

of time, Mr. Plaxico came out and said they were going to take Anderson to the Hamilton County jail and commit him there. Mr. Hunt and I, thereupon, left the Marshal's office and went to Commissioner Anderson's office, where the Government was taking out a complaint for all these defendants. On the morning of May 1st, Mr. Hunt and I went to the Hamilton County jail and tried to get in to see the defendants. I telephoned General Frazier here before we went to the jail and told him that it was impossible for me to see my clients and he agreed with me that we had a right to see them, but he said he had no authority to make any order whereby I might see them. On the 4th of May, which was Saturday, I called Agent O'Conner and told him that some of the defendants' families, their wives and people wanted to come down and see them on Sunday, which was visiting day at the Hamilton County jail. I asked O'Conner if their families would be permitted to see them at that time if they came down Sunday and he told me no, they would not be permitted to see them. The next day some of them were supposed to come down here and as I recall only one came down, Wayne Henry's wife. I was at the Hamilton County jail and Agent O'Conner was in the bookkeeper's office. I asked Agent O'Conner then if Wayne Henry's wife might see him, which was on Sunday afternoon May 5th and he told me no she could not. Sunday afternoon is visiting day at the Hamilton County jail. After a day or two I got to see the defendants one at a time; that was the rule at the jail, then I complained to Sheriff Burns again and they started bringing them down two or three at a time, I think as many as three on one or two occasions.

The first time I got to talk to them all together was Monday May 6th, the day the original preliminary hearing was set and then they permitted all the defendants to go into the bankruptcy room or grand jury room and we talked to them together. However, two deputy Marshals went in with us and wanted to stay in there while we talked to them. Mr. Goodner was one of the deputy Marshals, I don't recall who the other one was. After some discussion in there in fifteen or twenty minutes the Deputy Marshals did go out of the room and we talked to our clients in that room.

On January 6th, I was in Copperhill and had a conversation with the witness Freed Long. John McGhee and Rans Smith and M. C. Anderson and I were in the car and Anderson and I stopped at Wayne Henry's place and had lunch. John McGhee and Smith sat in the car and when we finished eating Wayne Henry walked out to the car with us and was standing by the side of the car when Freed Long came up the street and walked up to the car. I didn't know him, had never seen him in my life. I wasn't introduced to him and he started talking to Anderson, and said he had some information he wanted to give Anderson. He said the Marshal or somebody had been there summoning witnesses and had a subpoena for him and he didn't want them to find him right then. Those are not his exact words but substantially what he said. These names were on a piece of paper and he handed it to Anderson and I got the piece of paper and Anderson in the meantime got out his book that he had here in court this morning and wrote down the names on the book and I asked Freed Long what he knew about

the case anyway and he said I don't know anything about it, I believe I said you don't know anything about it anyway do you Freed and to the best of my recollection he said no I don't know anything and then he said he only had $1.50 in his pocket and if we could give him $25 he would swear anything we wanted him to and would make us a mighty good witness. I told him I didn't do that sort of business.

Cross Examination by Mr. Badgett.

He said he would make a mighty good witness. When I saw Sweat Woodward's name on the piece of paper I knew he was one of the defendants. There was no occasion for me to make any comment, Freed Long told us he got his information from Deputy Sheriff Rose. As I said, I asked him what he knew about the case and he said I don't know anything. I can't tell you what was the occasion of him wanting $25, I don't know.

I was employed to represent the defendants before I knew them, that is correct. I did go to the United States Commissioner's office and got there before the complaints were drawn, in fact I offered to sit down at the typewriter and draw the complaints for Commissioner Anderson. It is true I represented the men before a complaint had been sworn out and I knew what I thought they would be charged with when the complaint was being taken out. Commissioner Anderson's stenographer had gone that afternoon and he said he was pretty slow on the typewriter and it would probably be a lengthy complaint and I told him I knew how to use the typewriter and to accommodate him I told him I would be

glad to write the complaint for him, as an accommodation.

The original commitment was at the Hamilton County jail on the 30th of April. I was present at that time when Ed Simonds, and each of the other four men plead guilty. It happened just about like Commissioner Anderson said yesterday when he testified. Commissioner Anderson said there were so many that he couldn't tell what was what and who was who and said all who plead guilty got in this corner and the others over here. Five of them got over in the corner and said they were pleading guilty.

(This witness was then excused.)

The witness, MRS. BUDGE WOODWARD, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Mrs. Gordon Budge Woodward. I am a sister to Felton Woodward and Theodore Woodward, that is sister-in-law. I married their brother, Budge Woodward. In the early part of the month of April, 1940, Felton Woodward came to my home in Atlanta, it was just about noon when he got there. He came there just about noon on the 9th day of April and we went up to the State Capitol to see Capt. Payton, where Felton had a conversation with Capt. Payton. Capt. Payton is State Geologist for the State of Georgia. The reason I remember that it was the 9th day of April, 1940, was that Felton Woodward wanted to borrow some money from us and I loaned him $25 and he gave me a note for it and I have the note now, dated the 9th day of

April, for the $25 and the note was made out at the time I let him have the money. My husband was present when the note was made out and I let him have the money. I would say it was right around noontime when the note was made out. It was made out shortly after he got to my house. My husband works for the Atlanta Journal and he goes to work at six o'clock in the afternoon and gets off at 2:30 in the morning.

Cross examination waived.

(This witness was then excused.)

The witness, GORDON BUDGE WOODWARD, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Gordon Budge Woodward and I am a brother of Felton and Theodore Woodward. I live in Atlanta, Georgia, and am the husband of the lady who just preceded me on the witness stand. Felton Woodward came to my home in Atlanta in the early part of April, 1940, and he and my wife drove up to the State Capitol to see Capt. Payton. I didn't go with them since I had to go to work at six o'clock that night. Felton borrowed some money from me, a small amount and as is customary and as he had done before, he gave us a note and insisted that we take it, which was perfectly business and we took it to pay within ninety days. The note was dated. The note was dated the day he was there and the date he got the money and that was on April 9, 1940. Felton came in probably a little before noon, I don't know just when, and he left in the after-

noon, I don't remember just what time. I hadn't gone to work when he left and I usually leave home around five o'clock.

Cross examination waived.

(This witness was then excused.)

The witness, GARLAND PAYTON, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Garland Payton and I am at the present time Director of the Division of Mining of the Georgia Department of Natural Resources. My office is in the State Capitol at Atlanta, Georgia, and my original home was at Dalonaga, Georgia. I have known Felton Woodward about all his life. I have no particular connection with him, except I was in the College at Delonaga as a teacher and he grew up around there and played tennis and so on. Later I knew him at Copperhill where I was employed by the Tennessee Copper Company. I was employed there two and a half years, from July, 1928, until the end of 1930. In the early part of April, 1940, Felton Woodward came to my office in Atlanta, Georgia. I have no way of fixing the exact date he was there. I remember it was shortly after I had been to Washington where I had opportunity to discuss the situation with reference to the strike then existing at the Tennessee Copper Company in the plant at Ducktown and soon after that Mr. Woodward came into my office with his sister-in-law and discussed that phase of it. In fact, I knew he was working there and was affected by the strike.

I know Budge Woodward and Mrs. Budge Woodward and Mrs. Budge Woodward came to my office with Felton. I have known Felton, as I said, practically all his life and I think I am acquainted with his general reputation and character in the community where he lives and that character and reputation is good and from that he is entitled to full faith and credit on his oath in this Court.

Cross Examination by Mr. Ault.

I am not in any way related to Mrs. Budge Woodward and I have known Felton Woodward intimately for a good many years, been about as intimate with him as you could with people not related to you or not in your family. Felton would come to me for advice with reference to hunting up a job and for a recommendation for looking for a job. It is about 150 or 160 miles from Atlanta to Bessemer, Alabama. The roads between Atlanta and Bessemer are good. I was the one that brought up the question of the strike when Felton was at my office, I asked him if he was on strike and if it had affected him adversely. Felton wanted to know if I could tell him how he could make application at the Federal Construction Agency at the Panama Canal; said he had heard there were some jobs being put out under the new Government construction, and wanted me, since I had been in the army, to tell him who to contact in reference to making application for that job.

(This witness was then excused.)

The defendant, ED SIMONDS, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Ed Simonds. I am 32 years old the 18th of last July. I am married and have three children and formerly worked for the Tennessee Copper Company. I started working for them in December, 1928, and went out on strike in July, 1939. I stayed out on strike for some time. I remember that some power lines were blown up around Copperhill, however, I didn't go to the scene, but heard people talking about it around in the community up there. I was arrested the latter part of April, I don't recall the exact date. I don't remember whether it was Tuesday or Wednesday I was arrested but I am pretty sure it was one of those days and that was the latter part of April. I was arrested at Newton, about 50 yards from my home, at Felton Woodward's house, by Roxie Campbell and Pryor Crowe, Polk County Deputy Sheriffs. They didn't have any warrant of any kind. They said they wanted to carry us down to the city hall, or anyway down town and said they wanted to talk to us a few minutes and then we could come right back home. They didn't take me before a justice of the peace or any court of any kind, but carried me straight to the YMCA. Shortly after they got me down there Roche and Mann came in and talked to me. They talked to me two hours more or less that first afternoon. When they got through talking to me at that time they took me to the city jail and I spent the night in the city jail. I didn't get anything to eat at all that night and later that night some of the officers or guards, I don't

remember who it was, came and carried me back to the YMCA and this was about seven o'clock at night the best I remember and they kept me at the YMCA that time about two hours, and then I was carried back to the city jail and spent the night down there. The next morning they gave me a bologna sandwich on dry bread and it was cold. They also brought some coffee in a pint jar. Sometime the next day, I don't remember the hour, I was taken out of the city jail and carried back to the YMCA and at that time I was examined by Roche and Plaxico and I don't recall whether Mann was there or not, but I do know I was questioned by Roche and questioned about the same period of time, about two hours. I was then taken back to the city jail. That night after I had laid down, maybe 10:00 or 10:30 somebody came to the city jail and got me again. I was already in bed. I hadn't gone to sleep but was just trying to get to sleep and I was taken back to the YMCA, and when I got over there there was a whole bunch of FBI agents, that is what they told me they were, standing around with the guards, and they got me there and kept me an hour and a half or two hours and then I was taken back to the city jail. At noon that day I got a bologna sandwich and the best I remember that is all I got to eat at any time was a bologna sandwich. The next day I was questioned again but I don't remember what time it was. During these questionings I told the FBI men who were talking to me I was not guilty and knew nothing about these dynamitings. I told them that all the time and I still say that, and whenever I would tell one of the FBI men I was not guilty, whichever one was talking to me, would curse me, Mann called me a lying son-of-a-bitch with big oaths to it and Roche and

Plaxico both cursed me, both of them called me a damn liar numerous times. All during the interrogation the FBI men told me they knew what the truth was in reference to these things and when I started to tell them I didn't know anything about it, as I told them a hundred times, they said I don't want to hear that, answer me the truth, we know what the truth is, we had the goods on you when we picked you up. The first three meals that I had the coffee was all right, good drinking coffee and I could drink it. On the fourth meal I tried to drink it and drank about half of it and it didn't taste right and it commenced getting me nervous, my stomach was, and I couldn't drink it anyway. They kept bringing it back and I tried to drink it a time or two and couldn't and left it sitting there. It had a sickening taste to it. I have smelled the bottle you handed me, opened it, and in my best judgment it has the same taste and smell that was in the coffee, I do not know what this fluid in the bottle is.

I was never present at a meeting with a group of FBI agents with Earl Hubbard and Felton Woodward in which I verbally told anybody or any FBI agents I was guilty of these dynamitings and detailed the circumstances. I signed the paper exhibited here in court but don't know what was in it and didn't know what was in it at the time I signed it, it looks like my signature on it and I did sign a paper. It was not read to me and I didn't read it myself.

Plaxico told me all along that if I would sign the paper which he had there he would turn me loose, that if I didn't sign it he said he would make it hard on me and he would give me 15, maybe 35 years in the penitentiary, said the minimum was 10 years, he claimed I was in the dynamiting

three times, said that is three years each time, and five years for conspiracy. He also told me that if I would sign the statement that he would get me out on $1,000 bond and asked me if I thought I could make that and I told him I thought I could. He also told me that the FBI convicted 98% of all the people they prosecuted and asked me whether I wanted to be part of the 98% or a part of the 2%. He said you can be a part of the 98% or a part of the 2% if you want to. I did plead guilty at the original hearing before Commissioner Anderson. I did that because Plaxico told me to do it. He told me that I had a very sick, nervous wife, he said I have been up to see your wife and your wife is in bad health and I said that is right. He said you can go back home with your wife and kids and he also asked me if I loved my family and I told him I did. I was not guilty and am not guilty and I said that all the time and still say it and will always say it.

I didn't tell Mann or anybody else that I had read this statement, the written statement, or heard it read to me and that it was true, it is not true.

In reference to the auger, I didn't tell Roche and Mann up there or anytime or a deputy sheriff that the auger was in the river. They carried me up there in a car and Roche and Dale asked me if I knew anything about it, Mann was not with them, and Roche asked me if I couldn't remember throwing an auger or brace and bit in the river. I said I did not, I never threw one in there and I never told Roche that an auger was at a certain place in the river.

When I was picked up on Tuesday or Wednesday and taken over to the YMCA I didn't get to see any of my family, I didn't hear from them and I didn't know what I

was being held for, more than they were asking me questions about this dynamiting. This was general talk up there in the community that the YMCA building is owned by the Tennessee Copper Company. I know the Tennessee Copper Company keeps it repaired and looks after it. I went through the fifth grade in school. If you use the word "retrieved" to me and asked me about retrieving something, I wouldn't know what you were talking about, I don't know what the word means and I never told Agent Mann, Plaxico or Roche or anyone else that I retrieved a watch out of the ditch. While I was being examined I asked Roche and I believe Plaxico if I might have a lawyer and I believe I also asked Mann. I asked Roche the next morning after I was picked up and he replied to me, he said you have got awfully damn smart since you spent one night in jail, and that was the first time I had asked for a lawyer and those are the words he used in reply to my request.

Cross Examination by Mr. Badgett.

I was picked up by Deputy Sheriffs at Felton Woodward's home, he lives about fifty yards from me. At the time the towers were dynamited I had been out on strike since the 14th of July, 1939. I know M. C. Anderson and I have been in his office many times, so many I can't remember them all. I guess I have been in his office plenty of times when some of these other men were present, and also lots of other men. All the membership of the Union walked in there for anything they wanted anytime they wanted to. I know Earl Hubbard. I absolutely deny being present on Sunday

night, April 28th, when Felton Woodward and Earl Hubbard were there and gave a verbal confession. I deny making such a statement, and that never did happen. The only verbal statement I ever made was that I was not guilty, that is all I have said at any time. I told them I didn't know anyone else that was guilty. I deny making a verbal confession in the presence of Plaxico or anybody else, I have always said I was not guilty and I still do. The only thing I heard Earl Hubbard say was that he was not guilty. The three of us were together at different times in the YMCA and we were together at the city jail but it was not at my request. Felton Woodward didn't ask that we be put together over there in my presence. I didn't tell the FBI in a joking way, or ask them whether or not they used blood hounds on the dynamiting on the 23rd in an effort to try and track whoever it was and I didn't say to them that I heard they had used them and ask them how far they got and I didn't tell them that I had heard of putting Cayenne Pepper or gasoline on your feet because they couldn't smell the scent. There was no mention of dogs by me or anyone else in my presence, it just never was mentioned. I didn't count how many times, different times, I was taken out of the jail. I was in the city jail every night but one, and I never got anything to eat at the city jail but sandwiches, and coffee that had something wrong with it. When I ate at the YMCA I believe I had two meals there, the day before we was carried down here to Chattanooga and I guess I ate the same food at those meals that the deputy sheriffs ate.

In reference to my condition when the statement was signed, I don't remember much about it, only I was sick. All I know is I didn't make any of the statements and if I did I don't even remember speaking. I do believe that is my signature and I said the other day it looked like my signature and I still say it looks like my signature and those initials on each page look like my initials and they don't look to be shaky. Agent Mann called me a big elephant and a lying son-of-a-bitch. I don't remember anybody else calling me a son-of-a-bitch but I was called a liar and a damn liar often. Mr. Roche was present when Mann called me a lying son-of-a-bitch and I believe Mr. Plaxico was there, they didn't make any remarks about it at all. Roche and Plaxico both called me a damn liar a few times. I don't know whether it was the coffee that made me nervous or not, I know I was nervous. I know it wasn't my conscience that made me nervous, my conscience has never worried me yet, never has. The first three meals I drank all of the coffee. The first three meals it was all right and the next one I drank about half a pint of it and the next time probably one-third of the coffee. I couldn't imagine what was wrong and I set it aside. I don't remember drinking it but two times after it made me sick the first time. It had made me nervous and my stomach was upset, in fact I had to get get medicine to get my stomach straightened out since I have been out.

Mr. Plaxico didn't say anything about turning me loose, about signing the statement, but he said if I would come clean and make the statement and quit lying he would get me out on parole, that he had much influence

with the Judge and would see that I got out on parole and come back home. He also did say he would turn me loose if I would sign the statement. He had often asked me to sign the statement before I did sign it. He would walk up in my face and try to force me to sign the papers that he had and of course I remember it. He didn't take ahold of my ear or hair and didn't point a pistol at me. I didn't read the statement, I didn't make any statement to read, but did sign a paper. He brought the paper to me and said for me to sign this and I don't remember signing the paper. Plaxico did have the paper and I don't remember whether I signed it or not, but that looks like my signature. The first time I heard the statement read or ever saw it that I remember about was at the preliminary hearing. I didn't know what was in it, until the preliminary hearing, if that is what he put up in my face, I don't know. I have no independent recollection of signing a statement on April 28th. I don't remember whether he brought a statement to me on Sunday or not, it was almost every day and night after the first night that they wanted me to sign a statement and the only thing I ever saw Mr. Roche write down, when he started questioning me, he asked where I worked, how long I had worked there, where I lived and how many children I had and I remember that. He put down where I worked, where I worked at the time of the strike and how long I had been with the company and how many children I had had. I don't think that was on Sunday April 28th, I think he took that down and when they first picked me up. They carried me before him. Mr. Roche, Mr. Plaxico and Mr. Mann told me they had the goods on me. I

don't recall that any of the other agents than those three questioned me, except Mr. Morgan came down to the city jail and asked me a few questions and he didn't say anything out of the way to me, just asked me what I knew and said I ought to be playing football or going to college. I never asked Mr. Morgan or any of the others what the qualifications were to get into the FBI, that I would like to get in, I didn't tell him the "G" men had been nice to me, I never said anything about that to them. They asked me if I didn't think they were smart and I said I don't know, you have one innocent man, that was Mr. Mann said that, and I said in reply, I don't know whether you are or not, you have one man that is not guilty and knows nothing about it. I was not guilty and didn't know anything about it. I didn't think they were so smart to pick up an innocent man. Mr. Plaxico asked me if I knew what the penalty was and I said I did not and he said it is ten years for each tower that was blown down and five years for conspiracy, 35 years. Mr. Baker has not told me what the penalty is for conspiracy. Mr. Plaxico and Mr. Roche often said that if I would sign the statement they would come down before the District Judge and see that I got paroled, and they told me they had a lot of influence with the Judge and they talked kindly towards me at that time and acted like they had sympathy for me. They would try to talk good to me for a while and see if I would tell a lie and then when I wouldn't do that they would try to use pressure. When I plead guilty before the Commissioner, Mr. Plaxico was there and he had his eyes on me and I plead guilty because I was told to, by Mr. Mann, Mr. Roche and Mr. Plax-

ico. They told me before I was carried down here when I got before the Commissioner to plead guilty so I could go back home to see my wife. They said if I didn't do it, it was going to be bad for me. I can't say they were present or not at the time I plead guilty, and I said I plead because I was told to. I didn't want to be drug around any more abused and talked to like I had been. I would rather have been in the Chattanooga jail than to be in their custody. I don't know who my attorney was at the Commissioner's hearing, my wife employed an attorney. I was somewhat dazed when I plead guilty. I had lost a lot of weight while they had me in custody. I don't remember Commissioner Anderson telling those who wanted to plead guilty to stand over in any corner and those pleading not guilty in another corner. I didn't move from where I was when I walked in until the others walked over to one side, the boys who didn't plead guilty. I know the other boys but I don't remember who plead guilty there. I was not paying attention, as long as I knew I wasn't guilty, I didn't want to be drug around any longer. I was willing to do as they said until the time come to take the witness stand. I don't remember whether Earl Hubbard plead guilty or not, but I believe he and Felton Woodward did. I don't know what Mr. Plaxico promised them, don't know whether he promised them anything or not.

We left from the city jail when we went out to the river, they didn't tell me where they were going, just said come on and go with us and they took me down to the railroad trestle and asked me where I throwed that brace and bit in the river and I said I didn't know, I don't know how they found out about a brace and bit

being there, I didn't know where they found it or where they got it. I went down there but didn't point out an auger or brace and bit either and didn't point out the place where the auger was lying. I didn't know anything about one being there. I didn't tell Mr. Roche that Robert Lee Rhodes threw that auger off of that trestle, and I didn't point out the place in the river where he threw it. I didn't tell Robert Rhodes when boring holes in the poles to let a man have the auger and I would show him how to bore those holes. I didn't bore any holes.

I didn't tell them during the latter part of March, 1940, Felton Woodward came to my house and told me they decided to blow up the power lines of the TVA and selected certain men to dynamite these lines and I didn't tell them that I agreed to go and didn't tell them that Felton Woodward told me that I was to assist on the Blue Ridge line.

I didn't make a statement that on the night of March 31, 1940, I went to Felton Woodward's home, at Newton, Tennessee, and met Bob Rhodes. I didn't tell them that Felton Woodward gave me, or drove me to Copperhill and picked up David Queen on the picket line. I didn't tell him we drove to Georgia and Felton Woodward dropped us off on the side of the road. I didn't tell them that Felton Woodward had dynamite and fuse in his car when we left, that I didn't know where he got it. I didn't tell them prior to going to Georgia that David Queen and I went to Mutt Green's house to borrow a brace and bit, I don't know where Mutt Green lives. I didn't tell them I told Mutt Green what I wanted it for, and that thereafter Felton and I drove to McKaysville, Georgia, and he

dropped me off there. That is not true. I didn't tell them that Bob Rhodes, David Queen and I walked up the hill to where two wooden poles were located and all three of us bored a hole in each pole and placed one and a half sticks of dynamite in each pole and attached 100 feet of fuse and lit the fuse and went home. I didn't tell them that Felton Woodward told me he and another man would blow the Parksville line and I heard the explosion before ours went off. I didn't tell them that several days before April 14, 1940, Felton Woodward contacted me and told me they decided to blow up the power lines again and I agreed to take part in it. I didn't tell them that on April 14, 1940, Felton Woodward picked me up and drove me over to Tate Green's house in Georgia and that Felton Woodward told me the dynamite was already supplied and the Green boys would assist me and that Woodward asked me about it and dropped me off at Tate Green's house and drove somewhere else. I didn't tell them that Tate Green got his brother and that we all three went to a log in the woods where the powder was hidden, 50 sticks of dynamite and 150 feet of fuse and the three of us carried it to a steel tower of the TVA and on the Blue Ridge line on Hot House Creek. I didn't tell them on that occasion we divided the dynamite into three parts and placed it on three legs of the tower and that we placed 15 or 16 sticks of dynamite against each one of the legs and that Mutt and Tate Green got scared and ran off and left me and I didn't follow them, that I continued on the job and placed the rest of the dynamite around and lit the fuse. I didn't tell Mr. Roche that Mutt Green and Tate Green ran off and I didn't get scared, but after I

hooked up the fuse I would have shot the thing down just to see it go off. I never was personally acquainted with the Green boys and none of that is true.

I didn't make the statement that on the 18th of April when discussing whether dynamiting should be done, I mentioned I wanted different people to help me on the job, because the two men, the Green boys, ran off and left me. I was never in a conference when anything was discussed about hurting anybody or any property. I didn't tell Mr. Plaxico and Mr. Roche that I continued on that job and placed the fuse around, placed the dynamite around and lit the fuse and there was about fifty feet of fuse to each charge and that after the dynamiting I walked to my uncle's home, Martin Simonds, and stayed there about two hours and ate breakfast and went home. They asked me if Martin Simonds was my uncle and I told them that. I don't remember which one asked me but after Martin Simonds was arrested and carried down to Copperhill they asked me what kin I was to Martin Simonds and I said he was my uncle. I didn't tell these men that several days prior to April 23rd, someone informed me that I was wanted at the Union Hall at Isabella to attend a meeting and when I went over there M. C. Anderson, John McGhee and Freed Long, and Felton Woodward were having a conference. That is not true. I deny that I told them M. C. Anderson told them that he probably was sticking his neck out then, but he wanted to shut down the works of the Tennessee Copper Company or that I told them Anderson decided on dynamiting of the TVA lines to shut down, and set a definite date several

days ahead for this dynamiting. I didn't tell them Woodward was to arrange for the dynamiting of the Blue Ridge line and Parr and Ballew were to assist him and I didn't tell them that Anderson said the powder was here, and I didn't tell them that someone else said the Green boys had the powder. I didn't tell them that Anderson was present there at the meeting and said arrangements would be made to blow up the Parksville line on the other end, on the same night. I didn't know anything about it, I couldn't have told them that. I didn't tell them that some men were supposed to attend the meeting and make plans to blow up the Parksville line but the men didn't show up, and I didn't tell them that Anderson said he would make arrangements for that later. I didn't tell them that on Monday April 22nd, that I was at Martin Simonds house in company with Woodward, Parr and Ballew, and that I went over there and met them there. I didn't tell them that Martin Simonds had 101 sticks of dynamite and 100 feet of fuse in his garage and I didn't tell them we took this dynamite and fuse and walked to the Wolf Creek Section in Georgia to pick out a steel tower. I don't know where that place is. I didn't tell them we remained in the woods all night Monday and all day Tuesday and at 1:00 A. M. Wednesday went to a tower and blew up this tower and I didn't tell them I placed twenty-five sticks of dynamite at each leg and cut the fuse to twelve foot lengths, because some of the fuse was wet. If I was fooling with fuse I wouldn't fool with any that had been wet, I would be afraid of it. Wet fuse is like firecrackers, if you get them wet they will go off in your hand. I didn't have any fuse, have not

had any in my hands since nine or ten years ago. I didn't describe to Mr. Roche or Mr. Plaxico that I cut the fuse in twelve foot lengths and it went off so quick I thought somebody was shooting at me and that I pointed my shot gun around and when the other went off I realized what had happened. A man would be a fool to think that a dynamite explosion was a shot gun. I have heard some dynamite explosions around my house and anybody would know a shot gun wouldn't do that. I didn't fall in a ditch and the other men fall in on top of me and I didn't lose my watch. I wasn't out there so I couldn't have lost my watch there. I didn't tell them that after that I walked back to Martin Simonds and ate there, because that is not true and I didn't tell them I remained there several hours and went home, because that is not true, and I didn't tell them anything that is in that statement.

(This witness was then excused.)

The defendant, EARL HUBBARD, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Earl Hubbard and I am 34 years of age. I am married and have four children. I formerly worked for the Tennessee Copper Company, and since the strike I am again working for the Tennessee Copper Company. I went out on strike with a large number of men back in July, 1939, and was still out on strike in the month of April, 1940.

On Wednesday April 24, around five o'clock in the afternoon, Deputy Sheriff Roxie Campbell and Pryor

Crowe came to my house and arrested me. They didn't have a warrant of any kind and they didn't take me before a justice of the peace or a judge or anybody else, but I was taken to the YMCA at Copperhill, Tennessee.

On the night of April 24th, 1940, I spent the night at the county jail in Copperhill. I was not questioned any that first night. I was questioned the next day by Mr. Plaxico and Mr. Mann and Mr. Roche, I would say for some three or four hours. When they got through questioning me in the YMCA I spent the night there, Thursday night. I was next questioned on Friday morning for a period of two or three hours and was left at the YMCA and then taken to the city jail, where I spent the night. I don't recall whether I had anything to eat the first night when I was in the county jail or not. I didn't have anything to eat on Friday night, when I spent the night in the city jail. While I was at the YMCA I ate with the guards. I was next questioned on Saturday and I was questioned from somewhere near nine o'clock Saturday morning until 4:30 or 5:00 o'clock in the afternoon, continuously. I didn't have anything to eat during that examination, and I didn't get to smoke a cigarette. When the examination started one of the agents took my glasses off. The light hurts my eyes without my glasses, they are not focused properly in the muscles and when I don't have my glasses on for a a few minutes, it makes me very nervous and gives me a headache. I am not sure which one of the agents took my glasses away from me. In this examination on Saturday two of the agents would come in and question me for a while, an hour and a half maybe, and then they would go out and two others would come in and that kept up all that

day. I was sick on April 27th and I asked for a doctor. It was somewhere around noon when I asked for a doctor for me and finally along after dark the doctor did come by to see me and gave me some medicine. I had had my glasses off all the time I was being questioned. Mr. Mann persistently called me a liar and a damn liar in this examination and I am sure the others cursed me, but I can't actually say which ones it was. When I would start to roll a cigarette the agents would not let me roll it, somebody knocked them out of my hands, Mr. Plaxico, did that. They told me no cigarettes and I didn't try to roll any. When I would get one out they would tell me no cigarettes, Plaxico and others, and that applied to all the FBI men who questioned me that day. I was sick all night Saturday night and I was still sick on Sunday. I did sign a paper during the course of this examination up there, but I didn't get to read the paper, but they didn't show it to me, and I have heard it read since that time. The first time I heard it read was at the preliminary hearing, that is my signature on the paper there.

Mr. Plaxico promised me if I would sign the paper he would come down to talk to the Commissioner first about bond and that my bond would be set at $1,000 and said anybody could sign it and he said also he would talk to the Judge, said he had influence with the Judge and would get the Judge to parole me or something to that effect.

I never told Mr. Plaxico, Roche or Mann or any of the other agents out there that I had blown up the power lines or had any part in it. I did enter a plea of guilty before the United States Commissioner, Mr. Plaxico told

me to do that, and he said if I didn't plead guilty that I would get as much as 35 years. I was continuously told by Plaxico, Roche and these other FBI men that they had the goods on me. During the course of this interrogation up there I lost 18 or 20 pounds in weight, while I was there in the YMCA at Copperhill. I asked Mr. Plaxico, in the presence of Mr. Roche and Mr. Mann, Thursday for a lawyer. They told me I didn't need a lawyer, that there wasn't any charges against me. From the time I was arrested until the day before I was carried down to Chattanooga I didn't get to see any of my family while I was up there, but after I signed my name to that paper they took me home to see my wife, Agent Whitten and whoever was in the room with him. I had not seen my wife since I had been arrested before that time. I had not seen anybody except FBI men and deputy sheriffs and possibly the cook around the YMCA, and maybe some of the other defendants being carried back and forth through the building; I had not seen anybody from the outside. On Saturday during the examination Mr. Whitten told me on Saturday if I would come on and talk that we would go out and get a nice meal and drink of water. I didn't have any water to drink all day, on Saturday there.

Cross Examination by Mr. Badgett.

My birthday is October 5 and I am 34 years old. I was 34 on October 5th. My wife's name is Pearl, her name was Pearl Stevens. We have four children, one named Helen, age 13, one named Betty, age 9, one named Bobbie, age 6 and the baby Carroll, five months old. I went to work for the Copper Company in September, 1936, that

is when the Copper Company opened and I was formerly with the Ducktown Chemical & Iron Company. I belong to the International Union of Mine, Mill & Smelter Workers and the strike was called on July 14, 1939.

On April 20, 1940, I hadn't been employed since the strike. I was at my home when I was first picked up and when I was at the YMCA I did eat with the deputy sheriffs there, ate what they had and slept in the same beds they did. I don't know whether I slept in the bed of the man in charge of the guards or not, but did occupy the same sort of beds they did and I spent two nights in the YMCA. I smoked cigarettes while I was there, except on Saturday. I roll my own cigarettes and it wasn't true that when one of the agents asked me something pertaining to the case, while rolling a cigarette I tore the cigarette up. I don't remember anything like that happening. Agent Mann cursed me, called me a damn liar, and the reason he called me that he wanted me to tell him what he was telling me was the truth. He was asking about the dynamiting and when I would say I didn't know anything about it he would talk to me that way. I am not sure who the others were that cursed me, there was so much going on and they talked to me so much I can't recall who it was and who did what but I am sure of Mann, for he did it consistently. I wouldn't say he did it every breath but he did it lots of times and was more persistent than the other agents. Plaxico knocked the cigarette out of my hand. I started to roll a cigarette on Saturday and he reached over and told me no cigarettes and said no smoking was allowed. The agents were smoking in my presence whenever they wanted to and I couldn't smoke. I did sign the statement

that you have there. I signed it for the reason I told you, to get out of the questioning and stuff like that. And the way I was being treated up there. I was being treated so bad I thought I would just sign it and stop it and Plaxico told me they would help me if I signed the statement. I don't know whether they talked to other men about the dynamiting or not, they talked to me and shoved a statement at me. I don't know whether Ben Cross involved himself or not, and I know now that Felton Woodward, Robert Ballew and Robert Rhodes, Ed Simonds and David Queen are the only ones who made statements. I never heard any of the other defendants questioned, I don't know whether they cursed them or not. That is my signature on the first page of the paper. I would not say it is exactly my normal handwriting, it looks like a fair signature, and every page is signed the same way. I wouldn't say that it does or does not differ from my normal signature. I remember Mr. Whitten sitting there and writing a statement in my presence, he just kept on writing and I didn't tell him anything, he just pulled it out of his imagination I suppose and when he got through with it he didn't read it to me, he pushed it to me to sign and I signed and I didn't ask him what was in it. There was another agent there, but I don't remember which one he was Mr. Whitten wrote the statement. Mr. Whitten didn't take the cigarette away from me, he did tell me if I would come clean and talk like he wanted me to that we would go out and get a good, nice meal and a drink of water. The meals at the YMCA were fair meals and I have seen lots better beds than they had there but these other men were sleep-

ing on them. I didn't make a statement to Mr. Lunsford and Mr. Whitten that I, Earl Hubbard, hereby make the following voluntary statement to J. E. Lunsford and C. A. Whitten, who have identified themselves to me as Special Agents of the Federal Bureau of Investigation, United States Department of Justice, because same is true, after having been informed that same may be used as evidence against me in any Court of competent jurisdiction.

I didn't tell them I was 32 years old. I didn't tell them I was born in Polk County on October 5, 1907, when this statement was being written. They asked my family history on the 25th of April and I gave them my family history on Thursday the 25th. They started questioning me on the 25th, Mr. Plaxico, Mr. Mann and Mr. Roche and others, Whitten and Lunsford could possibly have been there, but I don't remember whether they were or not. I probably told the FBI agents I was born on October 5th and that I was married to Pearl Hubbard who was formerly Pearl Stevens and I had four children and gave their ages and that I had been employed at the Tennessee Copper Company since 1936. I probably also told them that I belonged to the CIO Union and went out on strike on July 14, 1939, and probably told them things like that and since that time I had been unemployed. I didn't tell them that the first connection I had with any plans to destroy any of the Tennessee Valley power towers was after the first two sets of explosions, the exact date being about April 18, 1940, at which time I attended a meeting which was held at the Union Hall at Isabella and that isn't true. I didn't tell them there were present at that meeting besides myself, M. C. Anderson, Local CIO Or-

ganizer, Felton Woodward, Ed Simonds, Martin Simonds, Meggs Collins, Wayne Henry, Walter Bell, a man named Long and also John McGhee. I never attended a meeting like what you are talking about. I never have attended a meeting at which these men were present, they could have been at any of the ordinary meetings I attended, the regular meetings. I didn't tell them that during the meeting there was discussion about the CIO Union and Mr. Anderson said we could stop the production of the Tennessee Copper Company, and if we did that it would be a help, and be a short time before this company would come to terms with the CIO, and thereby enable the strikers to go back to work or negotiate a contract or words to that effect. I did not tell them that Anderson said there would be no investigation by the Federal Bureau of Investigation, that he had been trying to get the Federal Bureau of Investigation for eight months and he would be glad if they did come or statements substantially to that effect. I had heard talk up there in general meetings that they would like to have the FBI come in there and investigate interstate transportation of people who had been brought in there to work and guard. We had meetings once a week and everybody was present and all the men you have asked me about could have been present and others, and maybe more. I didn't tell them there was some talk, I don't know just how it was brought in, that the Tennessee Copper Company would have to pay for any damage to the TVA if they got the power, or that they would have to bear the expense of repairs to the line in order to get the necessary power from the TVA and

there was no discussion like that. I never heard a discussion like that. I didn't tell the FBI. I didn't tell the FBI that at a meeting Anderson brought out the fact that the destruction of the power towers before had tore out a lot of the furnaces of the Tennessee Copper Company and that if they were cut again it would have the same effect. I didn't tell them that at this time Ed Simonds volunteered to destroy a tower on the upper end, that is the Blue Ridge line, and Anderson asked Woodward to contact Clyde and Clint Huffman who would take care of the Parksville line, that is, cut the power off on all the lines by the same means. I didn't tell them that I agreed to go with Felton Woodward and move some dynamite and that Felton said the dynamite was over in Georgia, close to Galloway. I do know approximately where Galloway is. I didn't tell them that after the foregoing conversation Felton Woodward and Ed Simonds and I left the meeting and that in accordance with previous plans to meet Felton Woodward I joined him on the road at Mary Mine. There is an old mine out there known as Mary Mine and it is close to my residence. I don't know who took the FBI agents out and showed them the mine and told them what the name was. I didn't tell them Felton Woodward picked me up in his old model Ford Coach and we proceeded to Ducktown where we parked at Anderson's office. Felton Woodward did own a Ford automobile, I don't know whether it is a coach or not, and I wouldn't call it an old model. It is not a new car. Anderson's office was in Ducktown. I didn't tell them Felton went in and got an order for some gas at the Union office. I never got an

order for gas myself. I do know gas orders were issued. I didn't tell them that I didn't go in and that he remained in Anderson's office a very short time and I never made a trip down to Felton Woodward's to get gas. I might have made a trip to Anderson's office with Felton Woodward, I don't remember, I made trips up there with several fellows and could have gone with him. I didn't tell the agents that I ever took a trip down there with him. I didn't tell them that I might mention that prior to stoping at Anderson's office Felton and I stopped at the Union Hall a while where we engaged in general conversation with several individuals but we didn't go in. I have probably gone by the Union Hall and engaged in conversation with various people lots of times. I didn't tell them that after we left Anderson's office I went to Matt Styles's garage where we got some gas. I know Matt Styles and he has a garage there in Ducktown and Matt Styles is one of the men who testified here to my good character and reputation and in times gone by I have bought gasoline there and probably some oil. I didn't tell them that after that we went back to the Union Hall where I stopped and talked again and that it was about 9:00 or 9:30 o'clock at that time so all of us came on to Copperhill where we went to the Union Hall. There is a Union Hall in Copperhill. I didn't tell them I stayed there until eleven o'clock and then drove out the Blue Ridge highway to a point where it turned to the left by some church, the name of which I do not recall. There is a Blue Ridge highway out there and possibly some churches along the highway. I didn't tell them that we carried Rannie Chastain home,

he is the man who testified here yesterday. I didn't tell them that Theodore Woodward also went with us and picked up Gordon Parr at Burns's Chapel where he was cutting wood with a party. I have heard of Burns's Chapel but don't know where it is. I have lived in Polk County practically all my life. I didn't tell them that Rannie Chastain who testified here yesterday got out of the car there and that Felton Woodward, Theodore Woodward, Gordon Parr and I drove on down to a car where we parked, down to a creek where we parked and went on up the hill and got the dynamite and fuse out of an old hollow stump. I do know Gordon Parr and Sweat Woodward. I didn't tell them that Gordon and myself went after the dynamite as Gordon knew where it was. I didn't tell them I put the dynamite and fuse in the car and drove the car by Curtis Switch where we went to see Walter Bell about buying some land. I did have a conversation sometime ago about buying some land, renting some land, and Felton Woodward carried me over to Walter Bell and I believe Sweat Woodward was with us, but Gordon Parr was not. I did not rent the land from him. Curtis Switch is on the river somewhere above Copperhill, I don't know exactly where it is. Martin Simonds lives somewhere there in the vicinity of Walter Bell, I don't know how far apart it is. There are two Walter Bells, one called Little Walter Bell, and the one I talked to was the older Walter. I didn't tell the FBI agents this was not little Walter Bell, who lives over near Martin Simonds, but on the occasion I was talking about I did talk to the older or larger Walter Bell about renting the land and I don't know where little Walter Bell

lives. I didn't tell Mr. Lunsford and Mr. Whitten that we went over to Martin Simonds' house where we left the dynamite in his garage on the lower side. I have been to Martin Simonds' house numerous times and he has got a garage. I didn't tell them that we drove the car in the garage and the dynamite was unloaded by Felton Woodward and myself. I didn't tell them that was about 4:30 or 5:00 o'clock and that we drove down the road about three miles and I got out and walked over to my father's house. My father lives in Polk County two or three miles from Stewarttown and I would say it is about five miles from Martin Simonds' house. I believe it is more than three miles. I didn't tell them I left about 8:30 P. M. and returned home and shortly after the dynamiting, after the dynamite was put in the garage Martin Simonds came where we were and there was some talk about the dynamite in the garage and I didn't tell them it was my understanding that the dynamite was to be used by Ed Simonds and Gordon Parr in the destruction of the third explosion on the Blue Ridge line. I didn't tell them those were the only two men I knew were to be connected with this particular explosion. I didn't wind up the statement by saying that the above is all the information at my disposal concerning the third dynamiting on the Blue Ridge line, and it covers my connection with this matter. That I have read the foregoing statement consisting of approximately one and one-half pages, and the same is true. No promises or threats have been made to or against me in order to influence me to sign this statement, or to make same.

That last statement is about half an inch or more from my signature. It is less than an inch.

I deny that on the Sunday night, April 28th, in the presence of Mr. Plaxico, Mr. Roche and Mr. Mann, Agents of the Federal Bureau of Investigation, and also in the presence of Ed Simonds, or Felton Woodward that I made a verbal confession containing exactly or the essence or the same as the written confession. I deny that the three of us were placed in the city jail at that time so we could go over the details of the matter so that it could be put down in writing. I did stay in the city jail on Sunday night April 28th, and Felton Woodward stayed there and Ed Simonds stayed there and we were all in the same cell.

(This witness was then excused.)

The witness, DR. J. C. ELDRIDGE, having been duly sworn, and introduced on behalf of the defendants, testified as follows:

Direct Examination by Mr. Thrasher.

My name is J. C. Eldridge, I am a graduate of the Medical College of Vanderbilt University at Nashville, Tennessee, and have been practicing medicine twenty-seven or eight years. I was health director in Hamilton County several years and at the present time I am Assistant Health Director of the City of Chattanooga.

This bottle you have handed me contains Hypno-Bromide Compound. It is a bromide, chloride, a hypnotic for nervous condition. This hypno bromic compound has got salt of bromo potassium in it and acts as an irritant to the stomach and it would be an irritant to the stomach in any size dose and would have a tendency to produce nausea

and a sick stomach. It is a salt product, a drug known as a sleep producing drug, it is not a narcotic but a sedative and hypnotic, would make you sleepy and as to nervousness it would quiet you. It is used at the county jail as a sedative in cases of D. T.'s. In large doses it would make you sleepy and groggy and a big dose would affect you and make you seem like you were drunk. I file this as Exhibit No. 1 to my testimony.

Cross examination waived.

(This witness was then excused.)

The witness, WILLIAM PERRY CLAXTON, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Wm. Perry Claxton, and I am Pastor of the Powderly Baptist Church at Powderly, Alabama, and have been Pastor of that church for three years and a minister for eleven years. M. C. Anderson is a member of my church and I have known him for about three years. I know his general reputation and character in the community where he lives and it is good and from that character and reputation he is entitled to full faith and credit on his oath.

Cross examination waived.

(This witness was then excused.)

The witness, GEORGE LEWIS BALES, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is George Lewis Bales and I live in Birmingham, Alabama, and have lived there for about twenty-five

years. I am a lawyer and am Circuit Solicitor for Jefferson County, Alabama. My duty is that of prosecuting attorney for Jefferson County, and I have been prosecuting attorney for about twelve years.

I have known M. C. Anderson for about six years and know his general character and reputation in that community down there and it is good and from that he is entitled to full faith and credit on his oath in this court.

Cross examination waived.

(This witness was then excused.)

The witness, CLYDE MORRIS, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Clyde Morris and I live at Bessemer, Alabama, was born and raised there. I am Chief Deputy Sheriff of Jefferson County, Alabama, and have been Chief Deputy of that County for two years and an officer since 1931.

I have known the defendant M. C. Anderson all my life. I know his general character and reputation in the community down there and it is good and from that he is entitled to full faith and credit on his oath in court.

Cross Examination by Mr. Ault.

I live in Jefferson County, Alabama, and Mr. Anderson lives in Jefferson County also, approximately eight or nine miles from where I live.

(This witness was then excused.)

The witness, FELTON COLLIER, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Felton Collier and I am Postmaster at Bessemer, Alabama, and have been Postmaster there for six years. I was in the school system as a teacher and a coach and then principal of the school for about twenty-one years.

I know M. C. Anderson and have known him since he entered school there, but he was in school when I returned there from the army in 1919, and I have known him ever since then. I know his general reputation and character there in the community and it is good and from that general reputation and character he is entitled to full faith and credit on his oath in this court.

Cross Examination by Mr. Ault.

I never heard anything otherwise about his character and I don't know that I heard anything either way.

(This witness was then excused.)

The witness, and defendant, JOHN DAVID QUEEN, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is John David Queen, I am 33 years old and live in Polk County, Tennessee. I formerly worked at the Tennessee Copper Company and went out on strike last July and was still out on strike when April, 1940, came.

I remember hearing some talk about the power lines being blown up around there. I was arrested Sunday after-

noon April 28th, 1940. A deputy sheriff by the name of Creed Brock and Bill Rose came by and arrested me and took me to the YMCA. They didn't have a warrant for me and told me that the FBI wanted to talk to me.

At that time my baby had bronchial pneumonia and was in a very serious condition and me and my wife were discussing getting a doctor at that time, and we were discussing whether to call Dr. Stouse or Dr. Hyde. The baby is two years old.

When I got to the YMCA there was a bunch of deputy sheriffs there as we entered and some strange men there, I can't recall whether they were deputy sheriffs or not. At that time I didn't talk to the FBI men, but did talk to them on April 29th. I would say it was somewhere around 8:00 or 8:30 Monday evening, somewhere around eight o'clock at night. I spent Sunday night in the city jail and as I recall Robert Rhodes and I was put in the same cell at the same time and then Earl Hubbard and Felton Woodward and Ed Simonds were put in and we all five stayed in the same cell there together. There was a sort of room there or place where two men slept and no place for the other three to sleep. I didn't sleep any Sunday night. There was one chair in there, two man were laying on the little cots whatever you might call them, beds and one man was sitting in the chair and the other two sitting on the cold concrete floor, leaning back against the bars and that is the way we spent the night. There was not any discussion between Ed Simonds, Felton Woodward and Earl Hubbard and I about getting our stories together. The first night I was in the city jail I didn't

get anything to eat at all. I did sign some kind of paper and that is my signature on the paper. I hardly ever write with a pen, usually use a pencil. If it was a pencil I could come nearer recognizing it, but I seldom ever use a pen and can't hardly say whether that is my signature or not but that is my name and I did sign some sort of paper. I didn't know what was in the paper and didn't get the agents to read it. I signed the paper because the FBI men, Mr. Mann and Mr. McCabe was there and after they got through talking with me they got up and turned their backs and McCabe wheeled around and said sign this right here, I guess you are in a hurry to get back to your wife and baby. He said I guess you are in a hurry to get back to your wife and baby and I did want to get back to them. I hadn't heard from her during the time I had been down there and didn't know whether she got a doctor for the baby or not. I plead guilty when I got to Chattanooga before the Commissioner and I was told to do that by Mr. Mann, one of the FBI agents. He said if I would plead guilty said they would release me and I could go back home. As I understood it they would relieve me and I could go back home if I would come down before the Commissioner and enter a plea of guilty. I didn't have any part or participation in any way of the blowing up of the power lines and I told the FBI men I didn't know anything about anything like that and denied to them at all times that I took any part in it.

Cross Examination by Mr. Ault.

I was arrested on the 28th of April by two deputy sheriffs, Brock and Rose and they are supposed to be

deputy sheriffs in Polk County and they took me to the YMCA for about five minutes, then put me in the city hall or city jail, which is about thirty steps across the street from the YMCA and I spent the night there.

I didn't talk to anyone on Sunday night. I might have said howdy to some deputies as I went in, or something like that, then the next day about eight of eight-thirty o'clock, late afternoon, it was dark, they took me out and examined me and that is the day I signed the papers whatever they are and that is the only time I was talked to for any length of time by members of the Federal Bureau of Investigation. I told them at the time this statement was taken that I was a married man, 32 years old and told them how many children I had, didn't tell them the exact ages, told them I had four and they asked their ages and I said they run from two to ten years of age and I told them I lived in Copperhill approximately ten years and had worked for the Tennessee Copper Company in Copperhill about twelve years and told them I came out on strike July 13, 1939, and had not been employed since that time.

I didn't tell them about a week before the towers of the Tennessee Valley Authority were blown up, I heard it rumored some of the boys were planning to do that and I didn't hear it and didn't know anything about the towers were to be blown up. I don't know whether they were blown up or not. I heard it talked around there but don't recall that I heard the explosion. I didn't tell them I couldn't tell them positively who it was told me they were going to be blown up, but that it was one of the strikers. I didn't tell them on the night the first towers

were blown up I was on the picket line at the L & N passenger depot in Copperhill when Felton Woodward came by to see me. I did work on that picket line at the passenger depot of the L & N Railroad. I didn't tell them it was between nine and ten P. M. on Sunday, March 31st, when I worked on that picket line. I didn't tell them that Felton Woodward asked me if I would help do a little dirty work and I told him if it would help any I would be willing to help and I didn't tell them he told me to get in his car and that I did get in and found Robert Rhodes and Ed Simonds in the car with Felton. I don't know as I was ever in the car with Robert Rhodes and Ed Simonds and Felton Woodward. I know I was not. I didn't tell them I then went over beyond Copperhill to a place called Sugar Creek and Barnes Chapel. I do not know where Sugar Creek is. I do know a church that I have been told is Barnes Chapel. I didn't tell them that we then went to L. B. Green's house to borrow a 2" auger. I did not know where L. B. Green lives. I know of L. W. Green, have seen him several times and have been in jail with him down here. I didn't tell them that Felton didn't drive up to Green's house in his car and I got out of Felton's car about a mile from Green's house and Ed Simonds and Woodward went down to Green's and got the auger, or that Ed Simonds and myself went down to Green's house and got the auger and I didn't tell them that Ed called L. B. or Mutt Green as they call him and told Mutt he wanted an auger and that Mutt went back in the house and got it for us.

I didn't tell them that Ed told Mutt if anyone inquired about our coming down so late at night to tell them we

were hunting a dog I lost. I didn't tell them we left Green's place and went back to the car where Felton and Rhodes waited for us and didn't tell them that we drove to the top of the hill at Bakerstown, and Felton, Ed and I got out of the car and took a shallow box out of the car containing the dynamite and fuse and caps and walked through the woods and walked around about an hour before we found the power line. I didn't tell them this was not very far from the road and we selected the first wooden poles we came to and bored holes in each of the two poles supporting the power lines and placed dynamite in the holes and I didn't tell them Ed Simonds handled the dynamite, that he was experienced in handling powder. I know Ed Simonds but didn't know whether he was experienced in powder or not. I didn't tell them Ed Simonds attached a fuse and lit it and we headed off towards the Railroad Bridge across the Toccoa River and I didn't tell them we had a lot of fuse and were almost home when we heard the blast go off. I didn't tell them we walked nearly three miles before the blast went off and that I then went to my house and went to bed. I didn't tell them that while we were boring holes in the poles we heard the blast or shot on the other side and Ed Simonds remarked, "Hell, those fellows have done fired on the other end and we are behind" and that we then hurried and got finished as soon as we could. I didn't tell them that after we heard our shots go off we saw a blue light in the direction of the poles that had been blasted and Ed then said they are burning down, meaning the wires had gotten together and were burning off. I didn't tell them two weeks ago to-day I was

at Turtletown cutting wood and Ed sent word to me to see him and I went over to his house about six o'clock Monday evening and he was not there. I didn't tell them that I found him down at Felton Woodward's house and I didn't tell them that I went back to this house and he put on a coat or sweater and he told me it was planned to blow up some more towers the next night. I didn't tell them that I then left this house and walked over to Martin Simonds' house in North Carolina. I know Martin Simonds but did not know where he lives and don't know whether he lives in North Carolina or not, or in Tennessee. I guess I have known Martin Simonds, a rough estimate, about twenty years. I never worked with him, he was a miner and I worked on the surface. I have known him twenty years and have no idea where he lives. I didn't tell them it was about eight miles from Martin's house and I got there about nine or ten o'clock P. M. at Martin's house and found Gordon Parr and Robert Ballew. I didn't tell them Martin was up sitting before the fire, talking to Parr and Ballew and that Martin's wife had gone to bed and I didn't tell them we stayed at Martin's house an hour and a half and went to Martin's garage and Martin, Parr and Ballew went into the garage for some powder. I didn't tell them the powder was divided up in halves and each half being placed in a sack and didn't tell them the fuse and caps were at Martin's house and Ed Simonds put the fuse in a canvass bag to keep it dry and I didn't tell them that Martin made some coffee before we left. I didn't tell them that when we left Martin's house it was sprinkling a little and that we walked to the power line and went along the line and down the hillside and laid down and rested, and

I didn't tell them I laid out in the woods all night and the next day and that it rained hard and I got wet, that on Tuesday night, April 23, 1940, we set the charges of powder around all four legs of the steel structure of the Tennessee Valley Authority power tower and lit the fuse and ran. I didn't tell them we had a short fuse on each post of the tower, and that we started as soon as Ballew and Simonds had lit the fuse and I didn't tell them we were so close we were not really safe distance away when the first shot went off and rocks fell near us. I didn't tell them anything about having a shot gun or shot guns, that one of them came from Martin Simonds and Ed Simonds got another from a neighbor of Martin's. I didn't tell them that after the shots went off I ran until I gave out and the rest of the boys built a fire and I laid down by it, and went to sleep, and the rest of the boys went on, and about 9:00 o'clock the next morning Ed Simonds and Gordon Parr came back for me and brought me some lunch, that I ate the lunch, that Gordon came on to town and Ed Simonds stayed in the woods and came in by himself later to avoid suspicion. I didn't tell them I got home around noon, Sunday, April 24, 1940. I told them all the way through I didn't take any part in any dynamiting at all, told them, of course, that I didn't take any part in the dynamiting on April 14th and told them I didn't know anything about any of the dynamiting except what people had been talking around there. I don't recall if there was anything mentioned about people had been talking around town during the questioning about the dynamite, I told them that was all I knew about the dynamiting, what I had heard the people talking around about

it. I didn't tell these agents I was sorry this happened, that I was green and misled and didn't know much about labor troubles. I did sign a paper there, but the paper was not read to me prior to the time I signed it. It was not read over to me by Mr. Mann, Mr. Hevron or Mr. McCabe, prior to the time I signed it. I don't recall Mr. Hevron being there when it was signed, Mr. Mann and Mr. McCabe were there and there was a deputy sheriff or two in there. None of the other defendants were present when I signed the paper. Some of the other defendants had been in the city jail with me the night before and we had talked over different things. At the time I was arraigned before Commissioner Anderson I did step over and enter a plea of guilty. I don't know that I had employed any lawyer at that time, I don't know if my wife had employed a lawyer or not. My wife employed Mr. Baker. I know Theodore Sweat Woodward. I don't recall whether I relieved Sweat Woodward on March 31st on the picket line or not, or whether he relieved me. I don't recall all this but that was his duty to relieve me at ten o'clock but I don't recall that particular night.

(This witness was then excused.)

The defendant, FELTON WOODWARD, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Felton Woodward and I am 31 years old and live at Copperhill, Tennessee, and have lived there about twelve years. I formerly worked for the Tennessee Copper Company, went to work for them in 1929 and worked there until we came out on strike on July 14, 1939.

I remember the occasion when some of the TVA power lines were dynamited in Fannin County, Georgia, and Polk County, Tennessee, in March or April, 1940.

I was picked up, I don't know whether I was arrested or not, by Roxie Campbell or Pryor Crowe. I was picked up at my home in Copperhill along in the middle of the afternoon on Wednesday and that was the Wednesday before I was arraigned at the County Jail at Chattanooga the following Tuesday, and would be on the 24th of April. I was picked up along in the afternoon. I don't know the exact time. Mr. Campbell or Mr. Crowe didn't have a warrant for me and didn't take me before a justice of the peace. They took me to the YMCA and from there to the city jail. I stayed at the YMCA until around eight o'clock on the 24th. I didn't have anything to eat that night before they took me to the city jail.

Nobody talked to me at the YMCA during the afternoon and before I was taken to the city jail. One of the guards later carried me back to the YMCA, where I was talked to. The same night I was put in the city jail I think they put Ed Simonds in there with me. On Thursday night I was questioned, nobody came and talked to me on Thursday morning or questioned me. We got some sandwiches the next morning, bologna sandwiches is all they ever gave me while I was in there, maybe two bologna sandwiches on some occasion. On Thursday night the 25th I possibly got something to eat but if I did get anything to eat it was just a bologna sausage, cold, on a piece of loaf bread and the same thing for breakfast and the same thing for lunch. They also brought some coffee over there Thursday morning, usually left a bottle of cof-

fee when they brought the sandwiches and the coffee would be hot. The coffee didn't taste right and I taken a headache every time I got in there until after I was put in jail here. I smelled the coffee when I drank it and noticed it smelled peculiar. I have smelled of the bottle (same being Exhibit No. 1 to the testimony of Dr. J. C. Eldridge) and the odor of the stuff there in the bottle is similar to the odor that was in the coffee. I began to think that the coffee had iodine in it. That was my idea about what it was. It gave me a headache and I was weak and lazy from drinking it, it made me dizzy after I drank this coffee and I was in that condition almost all the time that I was up there. I wasn't in that condition on the 24th of April, I was picked up on the 24th and didn't eat or drink any coffee that night but it commenced the next morning, on Thursday and I was the same way on the 26th of April and 27th of April and I just continually felt that way all the time.

I was first questioned on Thursday night by Agents Mann and Hevron and Broughton Biggs, at the YMCA. I was carried to the YMCA from the city jail by a guard, I was carried there by different guards, I know one time I was carried by Pryor Crowe. They came and got me about eight o'clock on Thursday night and I was questioned three or four hours by Agents Mann, Hevron and Sheriff Biggs. They asked me about dynamiting and I told them I didn't know anything about it at all and when I told them that Agent Mann told me I was a damn liar I did know something about it. I don't recall Agent Mann questioning me but that one time and maybe another time, I would say two or three times. Agent Mann told me num-

bers and numbers of times that I was a damn liar. I don't know how many times he called me a damn liar but I recollect he called me that as much as a dozen times that first night. From the 25th to the 29th of April Agents Roche, Mr. Hevron, Plaxico, Mann, McCabe and Morgan questioned me and Broughton Biggs was also there the first time. Campbell didn't question me but he would tell me that I did know something about it. I would think there were more FBI men there that questioned me than there is here to-day. Mr. Roche questioned me as I recall on Friday, I had previously been questioned about three hours commencing about eight o'clock on Thursday night by Mr. Mann, Mr. Hevron and Sheriff Biggs. That questioning lasted three or four hours and then the next time I was questioned was about noon or one o'clock on Friday. At that time the effects of the coffee was working on me. I guess I was questioned about three or four hours on that occasion by Mr. Morgan. He was alone at that time. He told me that he absolutely knew what the facts were in the case and he said I was not telling him the truth, said I was telling a damn lie and that I was a lying son-of-a-bitch. That didn't occur until the last, he wouldn't let me have anything to say, he was telling me the story, he told me the whole story and would ask me is that right and I would say no and he would say you are a lying son-of-a-bitch. I raised up off my chair at that time and told him I didn't take such as that and hadn't taken it off of anybody and didn't intend to, but since he was what he was I suppose I would have to take it or something like that. After he finished ques-

tioning me, somewhere around four o'clock in the evening I was taken upstairs then in the top of the YMCA and left up there with the guards until sometime that night around eight or nine o'clock. Then Mr. Roche and Mr. Morgan got me down there and another man, I don't remember his name. They had Ed Simonds and Earl Hubbard down there when I got down there. That was on Friday night. They got me down there and said these boys have agreed to tell what they know about it if you will. I said if they know anything let them tell it, I don't know anything. Then they got me off by myself and did something else with Ed Simonds and Earl Hubbard. Ed Simonds and Earl Hubbard said they didn't know anything, that they had not made any such statement as that. I don't know what they did with Earl and Ed, they took them both away from me and then they kept me in the room and questioned me, Mr. Roche and Mr. Morgan. They told me then what I had done and they were writing all the time. They questioned me that night until around eleven o'clock and then I was taken back and put in the city jail. These agents told me hundreds of times, when questioning me, that they knew what the facts were and Mr. Roche and Mr. Morgan on that occasion would tell me that they knew what the facts were. I was called a damn liar so much I don't recall. I don't recall whether I seen anybody on Saturday morning, the 27th, or not. Along in the afternoon I was taken back to the YMCA and I believe questioned by Mr. Plaxico, I am not sure, I was questioned about three or four hours that night and I wouldn't say positively who questioned me. When the questioning was finished I was carried back to the city jail. On Sunday the first time

I saw anybody was on Sunday night about seven or eight o'clock and then I saw Mr. Plaxico, Sheriff Biggs and Mr. Roche at the YMCA. One of the guards brought me over there sometime after dark and I was kept there four or five hours. They told me then, Felton we know what you have done, come across and be fair with us, we want you to sign a statement, and that was Plaxico said that. He told me that they convicted 98% of their defendants and said you are gone if you don't go down and plead guilty, there is nothing you can do about it. They told me the only way you can come clear is to plead guilty. I don't know that he told me at that time what would happen to me if I didn't plead guilty but he said I was gone and Mr. Mann told me a number of times I would get 35 years if I didn't plead guilty. Mr. Plaxico told me that if I would plead guilty he understood I had a case in Polk County and he would see it didn't amount to anything, if I come across, that he would talk to Sheriff Biggs and he did talk to Sheriff Biggs and came back in there and said Sheriff Biggs told him if I would sign the statement he would throw that case away, there wouldn't be any more to it, and it later was thrown away. They taken the case before the grand jury and got a no bill, then they fired that grand jury and got a new one and I went up there for trial and there was no prosecutor there and they turned in a verdict of not guilty. I have heard testimony here by Mr. Plaxico and others that on the night of the 28th of April Ed Simonds, Earl Hubbard and I were all questioned together and that all of us confessed completely that we were guilty and

asked to be permitted to go to the city jail and spend the night, be there together so we could get our stories straight. That didn't happen, there was no reason for me requesting to be put in the city jail, that was where I had been staying and Ed had been staying there with me most of the time. I believe Bob Rhodes and David Queen were arrested on Sunday night the 28th. They were in jail Sunday night when they carried me back down there. That Sunday night there was Rhodes, Queen, Hubbard, Simonds and myself in the city jail and I didn't hear anything said about dynamiting by any of those men at the city jail and no discussion among us as to getting stories together. I don't think I was together with E. Simonds and Earl Hubbard in the presence of Agent Plaxico and others on Sunday night. I was up there on Sunday night, they carried me around about in there but if I seen Ed and Earl there I don't recall it. The only time I was together with Earl Hubbard and Ed Simonds was on Friday night when Mr. Roche and Mr. Morgan had us at the YMCA together and at that time Mr. Roche and Mr. Morgan told me Ed and Earl had agreed to talk and tell all they knew if I would, I told them to let them talk, I didn't know anything and Earl and Ed both said they hadn't done that. I remember being present with some of them when a typewritten document was presented to me on Monday April 29th. I don't know how long I was questioned on that occasion but I think almost all night, I don't know. Mr. Morgan mentioned the name of John M. Cash to me. He started to tell me and still he told me he didn't want me to say a word, that he knew all this and he said no

one can buy powder unless they pay cash for it and he knew that and that they had looked around all over this territory to find a cash sale of powder and said they found one at Bessemer, Alabama, that had the name of John M. Cash and he told me that I had done that and I told him I didn't and when I did that he said you are a lying son-of-a-bitch.

I recall Dr. Steelman making a speech at the court house at Chattanooga about April 8, 1940, and I heard that speech. I was up home before I went to hear the speech and me and my wife and kid left home and came down here to my sister's and then we went up to the Key Hotel, my wife came with me, and we went up to see Mr. Anderson to go down with him. I knew he was there at the Hotel. I left Anderson at the Hotel and I saw Van D. Jones that night. The next day I went to Atlanta, Georgia, in Van Jones's automobile, went to my brother's and also went to the State Capitol, where I saw Captain Payton. I have known him ever since I was a kid and I understand he is in the State Geologist down there. My sister-in-law went to the State Capitol with me. I was out of work at the time and I thought maybe Captain Payton might help me get a place somewhere. I was not intending to go to Atlanta when I left home, I came down to Chattanooga to borrow some money from my brother-in-law to go to Spring City to look for a job there. My brother-in-law was not at home, he was working down in Alabama somewhere. I told my sister I wanted to borrow some money and she said she didn't have any, that Clayton probably did and when he came back I probably could get some money from him.

She also told me they were up against it and didn't know whether I could get it or not. The next morning I went to Atlanta to borrow some money from my brother and I did borrow some from him and gave him a note for it on the 9th of April. I left my brother's house about 5:30 o'clock or maybe 6:00 o'clock on the 9th of April, he goes to work around 5:30, I ate there before I left. His wife's sister was there also, I also know her mother and when I left my brother's home I carried his wife's sister out to her home. Her name is Olla May, I don't know the last name, she is married now, and I guess I stayed out there at her mother's about two hours. Her name was Olla May Clift at that time and when I got at the house there I saw her mother and another one of her sisters and I left there, I suppose, around 7:30. I came up to just the other side of Marietta, Georgia, something got wrong with the car, it went dead, and I pulled to the side of the road. There was a tourist camp about a quarter of a mile back that I had passed, and I went down there and saw a boy there, and we got to talking about my car, he didn't know any mechanic anywhere around there that I could get that night, that he would see him for me the next morning. We got to talking about Polanaca, Georgia, I was from there, and he said he had some people up there and he asked me where I was going, and I told him I was going back up in Tennessee, I told him I lived at Copperhill, of course, and he had started to North Carolina, and he said if I hung around until the next morning he would like to go with me, and I told him he could. I did wait until morning and we got the car fixed and came back in. I picked my wife up at my sister's and went on to Ducktown and she got out.

When I got back to Chattanooga my car was at my sister's house, I hadn't driven it to Atlanta because the tires were bad, but the car was in pretty fair condition when I got back, there was no particular reason why I couldn't have driven it to Copperhill. Van Jones was in Copperhill and I drove his car up there, I had to take his car back up there and I drove his car back with him the next day and got mine. The other man who was in the car with me come to Ducktown and got out. I knew nothing about the dynamiting up there and had nothing to do with it at all.

Cross Examination by Mr. Badgett.

I didn't give any statement. I signed my name to a paper though, Mr. Mann was there and three or four guards and Mr. McCabe, I believe was there. The ones who were there were the ones who witnessed whatever it was I signed. I believe Mr. Hevron was there, I am not sure. I do remember the occasion. I didn't feel as good as I do now after being in jail and no sleep for five nights. I am 31 years old and will be 32 in March, I was 31 years old on April 29, 1940. My post office box number over there was No. 273 and I have two children and worked in the Smelter Department of the Copper Company. I didn't work there ten years, I worked at the Floatation plant three years and did work at the Smelter Department most of the time I was there and have been with the company ten years. I came out on strike on July 14, 1939, and was affiliated with the CIO Union when they first went into it. I am a charter member there. We had had a Charter since 1934. Sheriff Biggs asked me and when he did Mr.

Mann and Mr. Plaxico were present, or rather Mr. Mann and Mr. Hevron were present. The Sheriff didn't call me anything, he just asked me what I was trying to hold back on Mr. Anderson and I told him that I was not holding back that I didn't know anything. The Sheriff didn't curse me or call me a damn liar but Mr. Mann did, I was not cursed by the guards. I was not very well treated by the guards, not treated very good. All of them told me that they knew the facts and that I was telling a damn lie, Mr. Mann called me a damn liar a number of times, and all the agents called me a liar, maybe not all of them called me a damn liar. Mr. Morgan was the one who called me a liar and added the son-of-a-bitch. I remember that Earl Hubbard and Ed Simonds and I were together there on Friday night, they brought me down from upstairs and Ed and Earl were in the room and they told me Earl and Ed had agreed to talk if I would and I told them to let them talk that I didn't know anything, and that was in their presence, and Earl and Ed both spoke up and said they hadn't agreed to talk and I don't know whether they talked or not. They didn't tell me about any implication in the dynamiting, I didn't say you fellows tell your implication and I will tell mine. Nothing like that happened and it is not true. I didn't hear Ed Simonds say to put the three of us in the city jail tonight together so we can get the details worked out and give a statement about it. We were in the city jail all the time. Friday night is the night we were all together in the city jail. It was Friday afternoon they had Earl and Ed together, I stayed in the jail with them most of the time, and I was with them

at the city jail on Sunday night. I didn't give a statement the following Monday morning and I didn't give any statement at all. I signed a statement on Monday night about eleven or twelve o'clock, Mr. Roche and Mr. Morgan questioned me, Mr. Morgan was with Roche when I came from upstairs, that is when Earl and Ed were together. Mr. Morgan was with them, he had questioned me before that, and that was on Friday evening. I don't think now that Earl and Ed Simonds and I were together Sunday night. Mr. Plaxico told me that the FBI convicted 98% of the defendants and if I wanted to come clean, if I would come across with them, and sign a statement, that is all that I had to do, he would see that I was taken care of, also that they would throw out the case in Polk County that I had there, he didn't say that the FBI was there to improve their percentage. He brought up the question about the 98% and said the FBI was always right, that is the impression he left with me. He didn't say that the FBI couldn't be wrong. They told me numbers of times that they knew what I had done, and Mr. Mann told me on many occasions if I didn't make a statement I would get 35 years in the penitentiary, one time was in this building and Mr. Roche asked me would I appear as a witness for the Government and I said I certainly would not and he said you will get 35 years for it, right there in that door. I didn't think about that awhile ago, I just now thought about it. My lawyer didn't ask me about it and I didn't have a chance to tell about it. Mr. Plaxico left the impression on me that he could do what he wanted to and I imagined he could. He said I could go back home to my

wife and kids and that the Court would follow his recommendation. I didn't make any statement to sign, I did sign some papers he had there. I didn't ask to read the paper that they wanted me to sign. I thought they could do as they pleased and I thought I had to sign it. I asked to read the paper and they wouldn't let me read it, and Mr. Plaxico also told me that the felonious assault case in the State court would be dropped if I would sign the paper. The felonious assault case grew out of the strike, that is all they picked up was men who were out on strike, they didn't bother about anybody else. I testified at the preliminary hearing in this case. When I was brought down here from Copperhill before the United States Commissioner I didn't have an attorney then, I hadn't had a chance to hire one. Mr. Baker was representing me at the preliminary hearing, but when I was arraigned down here the first time I didn't have a lawyer there then and I don't remember seeing Mr. Baker there. The best I can remember, the Commissioner says as I call your names each of you plead and the ones who plead guilty come over here and the others stay over there and that is what happened and when he called my name I plead guilty, and then realized I wasn't guilty after that. I knew all the time I wasn't guilty, they got my mind confused up there and it looked like that was the only way I could get out of it at all. I said I realized then I was not guilty, I saw I was just caught in a trap, I knew I wasn't guilty all the time, and I want the jury to believe, want them to know that I am not guilty; I realized after that I wasn't guilty and I say now I am not guilty. Dave Queen, Robert Rhodes,

Ed Simonds and Earl Hubbard all plead guilty at the Commissioner's commitment hearing. I didn't talk to them about it afterwards. I don't remember seeing any FBI agents on the bus that brought us from Copperhill. I didn't tell the FBI agents about the trip I made to Atlanta when they questioned me, because I didn't want to tell them anything. They had just been going into my whole history and I didn't figure it was their business, I didn't think he could ask me on things I didn't know about. These men identified themselves to me as Agents of the Federal Bureau of Investigation, showed me their badges and credentials and made me read it. I knew what they represented, but I didn't think it was their business to go into my history and I didn't say anything to them about my trip to Atlanta. I thought about it all the time, I didn't give them any statement at all. I don't know how long it took them to write that paper there, every time they questioned me they wrote something. I did go from Chattanooga, Tennessee, to Atlanta, Georgia in Van D. Jones's automobile and I got the automobile here in Chattanooga, at the Key Hotel, but I didn't stop at the Gulf Filling Station on the corner of 10th and Broad Streets in Chattanooga and get gasoline. I bought some gasoline down the road, I didn't buy any as I went down, but did as I came back, there was plenty of gas in the car. I have known Van Jones four or five years, and met him at Copperhill the first time. He is a Board Member of the International Union. I told him I wanted to borrow his automobile to take a trip and he said it was all right

and didn't ask me where I was going. He said he would be at the Key Hotel in Chattanooga when I got back or if he was not at the Key Hotel he would be in Ducktown with Mr. Anderson. I stopped at the Key Hotel to see if he was here and he had already checked out. Mr. Anderson was there in the lobby when Mr. Jones let me have his car, and neither one of them asked me where I was going. I didn't tell him how long I wanted the automobile, be a day or all day and night, he figured I would be back, I guess. I have borrowed his automobile before and have also driven Anderson's automobile. I came to Chattanooga with Mr. Anderson to see a lawyer when I was in that case and drove his car around down here. I drove it and drove it about around Copperhill, but not very much. I can't remember any specific occasion when I had it. I know all the defendants here on trial, and I have been in meetings up there where they were practically all present, and I have been in Mr. Anderson's office. He has had an office in the Ducktown Hotel, then an office at Lafever's house and one by Lafever's house, next door to it, and Lafever's was the last place he moved to. I have a little boy named William. Wayne Henry came back to Chattanooga with Van Jones and I after I had taken his car back to Copperhill. I came back down here to get my car. The reason I didn't take my car was I didn't have tires sufficient for the trip. I brought my little boy and wife here to Chattanooga when I came here and they stayed at my sister's, Kathleen Porter, who lives at 1722 Newton Street here. After we went out to her house we left our boy

at my sister's house and my wife and I came to the Key Hotel and met Anderson and his wife and later met Van Jones. Me and my wife went up to Anderson's room and after that we went to hear Dr. Steelman's speech and after Dr. Steelman's speech we came back to Anderson's hotel, and then my wife and I went out to my sister's and I told Van at the Hotel I wanted to use his car the next day and he said it was all right and Jones came out by my sister's house the next day after me and we rode back to the Key Hotel and I left him there and went to Atlanta. I got to Atlanta about noon and borrowed the money from my brother and then went to the State Capitol, and talked to Garland Payton up there and after that went back to my brother's. I stayed in Atlanta about eight hours, I guess, seven or eight. I don't remember the date of the month I was down there except the note I gave my brother for the money I got. I haven't paid the note yet, it was due in ninety days after I was there. After I left Atlanta I went to my mother's, her sister was there and carried her by home and talked to them about a couple of hours, I guess. They are not here to-day. After I left Atlanta I came on back towards home, that was the same day of the month, and was supposed to be the 9th day of April, the 9th of April, that is the date of the note I gave him. I don't have any independent recollection about the exact date other than the note I gave. I don't recall what day of the week it was other than I know it wasn't Sunday. I didn't get as far as Marietta on the way back, I got just about there at Smyrna and something got wrong with the car and I pulled it

over to the side of the road. I didn't know what was wrong at that time, but the next morning something was wrong with the distributor. A mechanic down there at a tourist camp, a boy at the tourist camp where I was got the mechanic the next morning and his name was Anderson. He is not here as a witness. I came on back here to Chattanooga and stopped at the Key Hotel to see if Van Jones was there and found he was not there and I went to my sister's and picked up my wife and baby in Jones's car and left my car there at my sister's. While I was away in Atlanta I left the keys to my car with my wife and told her she could use it in town if she wanted to. The next day after I got back from Atlanta, I came back to Chattanooga in Jones's car with Wayne Henry and Jones and got my car and drove back to Copperhill. My post office box is 273. I didn't make the following statement to FBI agents Hevron and Mann:

"I, Felton M. Woodward, wish to make the following voluntary statement to N. H. McCabe, E. M. Hevron and R. T. Mann, who are Special Agents of the Federal Bureau of Investigation of the United States Department of Justice. I make this statement without any threats or promises, having been made to me and knowing that it can be used against me in court."

I told them the first day they questioned me I was 31 years old, and that I lived at Copperhill. I told them all the time I had post office box 273, I told them I was married and had two children and I possibly told them I had been working for the Tennessee Copper Company in the Smelter Department for the past ten years. I didn't

tell them that on July 14, 1939, we went out on strike at this company and was affiliated with the CIO about three or four months before the strike was called. That is wrong, I didn't tell them that, I am a charter member of that Union. I can't say whether I told them that on Sunday, March 31, 1940, about 2:00 P. M. I was at home and someone came over and told me that M. C. Anderson, who is an Organizer for the CIO, wanted to see me, to come to his, Anderson's, office at Ducktown, which is four miles from Copperhill. Anderson sent for me a great number of times. I do remember one time I was at Hobart Wright's house and my little boy came up and said Anderson wanted to see me, and my home is about four miles from Anderson's office. I don't remember telling them that Anderson lived there and also had his office in a house, which is next door to the home of Dewey Lafever and is located in the house right next door and East of Lafever's. I don't know as I made the statement that the person who came to my house didn't say what Anderson wanted or give me any other details. My little boy told me that the person who came to my house didn't say what Anderson wanted or give me any details. I have a 1936 Ford automobile and I don't remember telling them I got in my 1936 Ford Sedan and drove to Anderson's office. If I went to Anderson's office, I guess I did. I might have told FBI Agents:

"I now definitely recall after thinking it all over, that my young boy, William, came to me while I was at a neighbor's house, that of H. M. Wright, and told me Sweat, who is my brother and whose real name is Theo-

dore, had sent him to tell me that Anderson wanted to see me."

I remember being at Wright's house and my little boy coming and telling me Anderson wanted to see me. I recall one time he did do that. I might have told them that Sweat lived just across the road from me and I didn't recall who had contacted Sweat to tell me I was wanted by Anderson. Sweat lives close to me but not across the road. The back of his house and back of mine come together. I didn't make the following statement to the FBI Agents:

"Sweat didn't go with me and I drove alone. I went into Anderson's office and he was alone and told me to make arrangements to dynamite the Tennessee Valley Authority power lines which lead into Copperhill from Parksville, Tennessee, and from Blue Ridge, Georgia."

I didn't tell them this:

"By dynamiting both of these lines, which are the sole source of electricity, this would cause the Copper Company to cease operations."

I didn't tell them:

"At this time he didn't say where it was. I then got, then left his office and got into my car and drove home."

I didn't tell them:

"I asked him if he had the powder and the stuff to do it with. He replied, we've got the powder."

I didn't tell them:

"I saw my brother Sweat then and as I wanted someone to go with me I asked him to drive over to Ben Cross's house but didn't tell him what for."

I don't know where Ben Cross lives and have never been to his house.

I didn't tell them:

"I knew from previous talk with him that Cross would do his part and this is the reason I went to him."

I didn't tell them:

"Ben lives in what is called the Hell's Hollow community near Copperhill and I got there about six o'clock that afternoon."

I do know that he lives somewhere in that district over there, some twelve or thirteen miles away.

I didn't tell them:

"I asked Ben if he wanted to get some of the power poles and he said he was willing."

I didn't tell them:

"I had called Ben out of the house and he and I talked about this in his yard. Clint Huffman was at Ben's house at the time, and I talked to him and Ben together and Clint said he would do his part too."

I didn't tell them:

"Ben, Clint, Sweat and I got into my car and drove to Clyde Huffman's house which is about a quarter of a mile. Clyde is a brother of Clint."

I don't remember them talking to me about Clyde and Clint Huffman. I know they are supposed to be brothers.

I didn't tell them:

"Clint said for me to drive by and pick up Clyde but didn't say why but I imagined he wanted to get him to help dynamite the lines."

I didn't say:

"Clyde got in the car and we drove across the Rodgers Ferry Bridge on the way back toward Copperhill."

I didn't say:

"It was dark at this time and was just getting dark when I had got to Ben Cross' house."

I didn't say:

"About 200 yards across the bridge one of them said to stop so they could get out."

I never took these men on a trip like that. The only time I hauled them; if I did, would be from Ducktown to Copperhill or Copperhill to Ducktown. I never dropped any of these men at any place.

I didn't tell them:

"Both of the Huffmans got out with another man who had got into the car when I picked up Clyde but they didn't tell me who he was or anything about him. It was dark and I saw this strange man well enough to know that he was a stranger to me and that I never had seen him before."

I didn't tell them:

"Ben Cross stayed in the car and we drove immediately to Anderson's house in Ducktown. Sweat and I went into the house and to the door of Anderson's office and Marion Ellis let us in."

I didn't tell them that Marion Ellis said here this stuff is and that I asked Marion Ellis how much powder was there and he said 25 sticks of dynamite and 450 feet of fuse.

I didn't tell them that Marion carried it to the door and got scared and turned it over to me and I took it to the car which was parked in front of Anderson's office.

I didn't tell them that Anderson was in his office at that time but didn't have anything to say.

I didn't tell them:

"When I first went into Anderson's office he was sitting at his desk alone and I told him that in order to blow up the wood poles which held the power lines on them, it would be necessary to have a brace and bit. Anderson said he had meant to get one a few days before and that he would get Marion Ellis to borrow or get one that night."

I didn't tell them:

"Right after this Marion came to the office door and had in his arm the dynamite."

I didn't tell them that Marion told me he had been out looking for a brace and bit and he believed he knew a fellow at Copperhill who had one. I didn't tell the FBI that.

I didn't tell them that Marion told me he would meet me at the branch right above the L & N Railway Depot in about half an hour.

I didn't tell them that I took Ben Cross to the vicinity of the Rogers Ferry Bridge and let him out and gave him half the dynamite and 250 feet of fuse.

I didn't tell them that I didn't see the Huffmans or the strange man around when I let Ben out but I figured he would get in touch with them in that vicinity in order that they could make arrangements to blow up the lines on the Parksville end.

I didn't tell them that after I let Ben out Sweat and I turned around and drove to my house and that I told Sweat to go up and get Bob Rhodes who lives near there, to come up to my house. and that in a few minutes Sweat and Bob came to the house; that while Sweat had gone to get Bob you went to Ed Simonds' house nearby and told him about our plans and that I had the powder and fuse for the Blue Ridge Line and he said he would do his part.

I do remember one time I was at Ducktown and went down to the picket line and stopped to see how they were getting along, or if anybody was there or not. The picket line was getting weak and Dave Queen was there and said he was sick and wished I would tell Sweat to come down early and I went up to the house and Bob Rhodes was there and I told Sweat about it and told him I would carry them down there and Bob and Ed went with me. I don't recall any date of doing that, but do remember at one time I did do it, took my brother Sweat down to the picket line at the L & N passenger depot. I don't recall telling them that, but I do recall doing it and that Sweat

did relieve Dave Queen and I could have told the FBI it. I don't remember if I did or not. I didn't tell the stuff I am denying here, I couldn't tell them that. The reason Theodore Woodward relieved Queen on this occasion was because Queen was feeling sick, he told me that. My brother did relieve Queen all the time on the picket line. I didn't tell the FBI that Bob Rhodes told me he wished he had a little more time, said Anderson should have given him more time. I didn't tell them that I went back home and in a few minutes Ed Simonds came to my house, but when I got there Sweat and Rhodes were already there and when Sweat and I let Ben Cross out and were on the way back home I stopped at the picket house near the L & N depot and talked to David Queen who was on duty at that time. I am pretty sure I didn't tell them that. Me and Dave and Theodore would know about that, Theodore went from the house to the picket line. I don't know how the FBI knew about it; my wife knew that I carried Sweat down there. I stopped at the picket line and David asked me to get Sweat to come down. Theodore knew about my taking him down there to relieve Queen and Bob knew about it and Ed Simonds knew about it. Bod Rhodes knew I went down there, he was with me, we went down to carry Sweat. I didn't tell the FBI men:

"I asked him if I could find somebody else would he be willing to go with them and go over on the Blue Ridge side and blow up some power poles."

I didn't tell them:

"He said he would do it and I told him I'd be back later that night and get him if I got someone else to go.

I didn't tell him about who was on the Parksville end but did say that that end would be taken care of."

I didn't talk about anything like that.

I didn't tell them that my brother Sweat, Rhodes, Ed Simonds and I left my house in the car and drove to where Marion Ellis was and as it was so much later than I expected, Marion wasn't there and I drove by the picket house and picked up David Queen and let Sweat out to take Queen's place on the picket line. I don't know how the FBI knew about that.

I didn't tell them that I knew Mutt Green and that he had said he had a brace and bit and that I drove to his place and Ed and David went to Green's house and got the bit which was a large one with wooden handles, and I have never been to Tate or Mutt Green's house.

I didn't tell them that I drove to the vicinity of Jim Allen's place in McKaysville, Georgia, I don't know where it is, and that I let Rhodes and Ed Simonds out of the car and they took the rest of the dynamite and fuse. I didn't tell then I then drove home and went to bed and that it was about 11:50 and as I recall the fuse was in a paper bag and the dynamite was in with it, that I didn't know where the dynamite or fuse was bought but, I didn't know how Anderson or Ellis got it. I didn't make any statement. I didn't tell the FBI:

"I want to make a correction with regard to the statement I made to the effect that I went to see Anderson in his office next door to Lafever's home. It is now my recollection that Anderson had moved into Dewey Lafever's home when I was there on Sunday March 31, 1940,

and that he is still living there now and also has his office there."

I told you awhile ago the different places Anderson had his office. I didn't state that awhile ago, however. The last place he had an office was in Dewey Lafever's house.

I didn't tell the FBI:

"About four or five days before the first dynamiting which was on March 31, 1940 (Sunday), I was at the Union Hall in Copperhill and it was about noon. Anderson called on the phone and told me he wanted me to come over to Ducktown to his office but didn't say what the nature of the trip was."

I didn't tell them:

"Hobart Wright and David Queen were in the hall at the time and I told them I was going to Ducktown and asked them if they wanted to go for the ride and they waited in the car while I went into Anderson's office."

I may have at some time taken Hobart Wright and David Queen in my car from Ducktown to Copperhill, I suppose I have. I didn't tell them that Anderson lived in the first house East of Dewey Lafever's house and that before I saw him the following Sunday he had moved into Lafever's house. I did state while ago he had an office in the Ducktown Hotel first and an office next door to Lafever's and then at Lafever's. He had an office previously next door to Lafever's and then at Lafever's.

I didn't tell them:

"When I walked into Anderson's office I didn't see anyone but from his office I walked on to his bedroom which adjoins his office and in his bedroom I saw Anderson, John McGhee, W. R. Smith, who is called Rans, and Henry Cochran."

I may have been back in his bed room at some time but I don't recall seeing these men back there if I was.

I didn't tell the FBI:

"When I went into Anderson's office I do recall that only he was there and he spoke to me and told me to go on into the bed room where the other men were and he did not say why he had called me there. He came into the bed room right after I did and everyone there was talking about different ways they could use to stop the Copper Company from operating and mention was made to dynamite the power lines from the Parksville and Blue Ridge ends."

That statement is not true, I don't know how they found that out. I didn't tell them that I entered into the discussion and said in my opinion that dynamiting the lines was the surest way of stopping the production and operations. I never mentioned anything like that.

I didn't tell them that Anderson also remarked that he thought other means should also be used against the company to stop operations in addition to dynamiting the power lines. I never heard Anderson say that. I never heard Anderson discussing the progress of the strike, except at a general meeting. At those meetings we would talk about the fellows who went back on us and about

trying to get them to come back out on strike.. We talked about that lots of times. Anderson never talked to me about dynamiting any, never mentioned dynamiting to me. We never heard dynamitings discussed in the regular meetings of the Union. I had heard it talked that dynamiting had been done.

I didn't tell the FBI:

"Anderson told all of us he would make arrangements to get the powder and fuse but didn't say when or where he'd get it. The meeting lasted an hour longer. After the meeting I took Wright and Queen home, as they live near me. I didn't tell them about what went on in the meeting."

Arthur Shillings was a striker at that time and I don't know how the FBI met him.

I didn't tell them:

"In a day or so Arthur Shillings, a striker, came by the Union Hall in Copperhill in the morning and suggested that I get up a group of men and blow the lines down and remarked, 'tonight will be a good one.' "

I didn't tell them:

"The next day I dropped into Anderson's office in Ducktown and he wasn't there but Marion Ellis was and Marion told me Anderson had said he didn't think it was a good idea to dynamite the power lines as they belonged to the United States Government."

I never heard that mentioned and I never told them that I told Marion Ellis that Anderson had just told me he agreed on this plan.

I didn't tell them:

"The day after this I dropped into Anderson's office and he was there and I told him what Ellis had told me concerning the power lines and Anderson said he thought it was the thing to do—meaning that he thought we should dynamite the lines."

That never happened. I might have been in Anderson's office along about that time, I don't know.

I didn't tell them:

"Several days before the second dynamiting (which was on Sunday April 14, 1940), we had another meeting in Anderson's office and those present were Clint and Clyde Huffman, Walt Bell, there were two Walt Bells, and this one lives in North Carolina, Meggs Collins, Freed Long and Anderson."

I don't recall that I was there at such a meeting. I know I was not there at a meeting when Freed Long was present, I don't know him. He didn't work on the picket line that I know of. I don't say he did or did not, I just don't know.

I didn't tell them:

"This was in the afternoon and Rhodes told me at the Union Hall at Copperhill that Anderson had called for me to see him. When I got there the other men were already there and Anderson told me, in the presence of the others, that he wanted the lights put out again so the men can go into the mines, meaning that he wanted some of the men to go into the mines and do some damage."

I never heard that discussed at all and don't know where they got that.

I didn't tell them about a week after the first dynamiting I was in Anderson's office talking to John McGhee and he told me there was a case of powder in Chattanooga but there wasn't any way of going after it. He didn't say who took it to Chattanooga and I figured Anderson had told him about it. John asked if I would drive over and get it and I told him I didn't want to as it was too dangerous.

I didn't tell them he also asked me if I thought he could get Martin Simonds to go and get it and I told him I didn't imagine so. About this time Anderson came in and I told him the tires on my Ford were bad.

I did say the tires on my car were bad awhile ago, and I don't suppose the FBI had been riding around in my car.

I didn't tell them:

"He then told me he had a case of dynamite in Chattanooga and hinted for me to go get it and I told him if he couldn't get anybody else to go that I would. He said if I would go I should come back from Chattanooga by way of Dalton, Georgia, and Cleveland, Tennessee."

I have never made a trip from Dalton, Chattanooga, by way of Cleveland and Dalton. I have never been to Dalton, except I have been through there but I have never been in Dalton. I didn't tell them that I said this will be the last time I would go as I figured it would get somebody in the penitentiary. I didn't tell them that Anderson gave me $10 to make the trip on.

I didn't tell them:

"That this was in the morning and he, Anderson; said he was going to Chattanooga later in the day and to meet him in the Key Hotel, call at the desk and ask for him."

I don't recall ever telling them that Anderson stayed at the Key Hotel at Chattanooga and I don't know as I made any statement that I would meet him at the Key Hotel. I don't know how they found that out, but I guess they found it out and I don't know who told them. I have been at the Key Hotel when Anderson was there. I didn't meet him on this trip to get the dynamite from him. I did meet him down there that night when Dr. Steelman was speaking is all I know.

I didn't tell them:

"After Anderson gave me the directions McGhee didn't have anything further to say so I left and went on home and worked a little on the car and decided to take my wife along so it wouldn't look suspicious."

I do have a little boy named Jack. They found that out the first day they questioned me. I told them at different times and also told them my wife's name. I don't know that I told them I had taken my wife and Jack on a trip to Chattanooga, I might have. As a matter of fact I had come down to Chattanooga and brought them because they wanted to come but no such trip as they were talking about. My sister's name is Kathleen and I may have told them my sister lived in Chattanooga and married Clayton Porter. She did marry Clayton Porter and does live on Newton Street and he worked for the Holland Furnace Company. I may have told the FBI that,

I didn't tell them that on Monday night. They were all the time writing down something. I don't know whether I told them I left Copperhill about five o'clock and got to Chattanooga about dark and went first to my sister's home and my wife and I went down to the Key Hotel. I could have told them that. I did come down here and went to my sister's home and then went to the Key Hotel and then met Anderson and his wife and Jones. I understood Anderson's wife was there at the Hotel and for this reason I took my wife to the Hotel as she wanted to see the town. She had been down here several times but had not seen the town. I don't know how the FBI knew Anderson and his wife were here in Chattanooga, I don't know who told them that, I think only Anderson and his wife were in the room when we got there. After we came back from the speaking Jones, Anderson and myself waited in the lobby and my wife and Mrs. Anderson went up in the room and my wife came back down and we went to my sister's. Before the speech Anderson and I didn't go down one floor to Jones's room and leave my wife in Anderson's room, not on the occasion I am speaking about, that didn't happen any time and I don't know where the FBI agents got that. I didn't go to Jones's room after the speech, I waited in the lobby, while my wife went upstairs, she had left a powder puff or something and went after it and Anderson's wife was with her and Anderson, Jones and I waited in the lobby. I didn't go up with them because it wasn't my business to go up with the ladies. I was with the men folks. They went to Anderson's room and Anderson was in the lobby with me and Jones. Jones lives in Birmingham or Bessemer.

I didn't go to the powder plant in Bessemer, Alabama, I went to Atlanta and back. I didn't tell the FBI I parked my car around 6:00 P. M. and Jones was in the Hotel parking lot next to the hotel. I didn't know where he was. I do think there is a parking lot there next to the Key Hotel. I didn't tell them that Anderson told me to go to the Gulf Filling Station, two blocks from the post office, either on Broad or Market and wait for him and he would come there in Jones's car. I don't know as I have ever been to that filling station. I did see Jones the night I was down there. I didn't testify on direct examination that I had been to the Gulf Station to meet Anderson. I might have been there but never to meet Anderson and never met him there that I know of and I think I would remember it if I had, I am talking about I never met him at the Gulf Filling Station at the corner of 10th and Broad Streets. I never went to a Gulf Filling Station and the corner of 10th and Broad Streets in Chattanooga. I didn't tell the agents that:

"Anderson told me to go to the Gulf Filling Station about two blocks from the post office over on Broad or Market Streets and await for him and that he came there in Jones's car."

I didn't tell them:

"I looked at my oil in the station and Anderson drove in and handed me a burlap sack and said 'here is that sack of potatoes.'"

Nothing like that happened.

I never told them:

"The sack contained the case of powder and locked up in the trunk of my car. My wife was with me at that time, and we drove to my sister's and spent the night, and the next morning I told my wife I was going to be away that day, but didn't tell her anything about our business."

That is not right. I did go away the next day, I don't know as I told my wife where I was going; I believe now I did tell her before I left home I was going to Spring City to get a job, but didn't tell her anything about going to Atlanta to borrow this money. I came down to Chattanooga to borrow some money from my brother-in-law and when I left my wife I had already made arrangements to go to Atlanta and I don't know as I told my wife anything about going down there. I didn't say I didn't. I told her before I left home that is why I wanted the money so I could go to Spring City. She was to stay here in Chattanooga until I went to Spring City. The best I remember when I left with Van D. Jones, in Van D. Jones's car to go to Atlanta that morning, I don't remember whether I told her about it or not. I wouldn't say I didn't and wouldn't say I did, I don't have any independent recollection about that. I didn't send her a telegram back to tell her I was going to stay all night on account of some trouble with the car. I didn't tell her that I was going with Van D. Jones to Bessemer, Alabama, and didn't tell her I was going with him and get some dynamite to blow up the Tennessee Valley power lines. I didn't tell her where I was

going that I know of. I might have told her I was going to Atlanta or might not, I don't know.

I didn't tell the FBI:

"My wife was with me at the time, and we drove to my sister's and spent the night and the next morning I told my wife I was going to be away that day, but didn't tell her anything about our business."

I didn't tell them:

"Van D. Jones came out and picked me up that mroning in a 1938 Nash Sedan, blue color."

I think he did come out and pick me up in a 1938 Nash, blue color sedan. The FBI told me several things I had done, I don't know, I might have told them that but they told me I did do this, said they had confidential information I did do it. Jones came out to my sister's house the next morning and got me and Jones and I were the only ones that came back to Chattanooga in that car, and Jones was a defendant on trial here, the FBI said they had confidential information about it, and that is right, as far as I know. I can't tell you whether Jones went to Denver, Colorado, right after the trip or not. I don't know whether he stayed here or not. He wasn't in the habit of staying in Ducktown very much. I didn't tell the FBI that this 1938 Nash Sedan had Alabama license on it and I don't know whether it did or not, I don't know what kind of license plate it had on, I judge it did have Alabama license plates on it but I never looked to see. I didn't tell the FBI that Jones and I left about 9:00 A. M. around Tuesday or Wednesday, April 9, 1940,

or April 10th. I told them several times Anderson stayed at the Key Hotel and I guess I told them that. I didn't tell them:

"We arrived in Bessemer, Alabama, in the early part of the afternoon and drove out to Jones's house and got some mail, and I later met Jones's wife, and then Jones and I went to the Labor Hall in town, and there Jones introduced me to a man who had a 1934 or 1935 black or dark blue Chevrolet Standard 2-Door sedan."

I told them continuously time after time I had never been in Alabama except when I worked there about ten years ago, in Montgomery and I don't know how the FBI got that information. I guess it was confidential information and it is not true.

I didn't tell them:

"This man had an Alabama tag on his car, and appeared to be around forty years of age, around five feet, eleven inches tall, well-built, clean shaven, no glasses, round faced, ruddy complexion," and I can't see how the FBI got that description.

I didn't tell them:

"I don't remember the man's name, and don't know whether he is located at the Union Hall or has a job some place. This man told Jones I could take his car out to the Hercules Powder Company to get the dynamite, and Jones told me I could get it without having to sign anything."

I didn't tell them anything like that and don't know how they got that information.

Agent Morgan told me, said he made an investigation everywhere they sold powder anywhere within 400 or 500 miles and that he knew that if we bought any powder we would have to pay cash for it and he had found one place where they had paid cash for powder and that was in Bessemer, Alabama, and that the name on it was John M. Cash and that I was the one that had done it. He said they had investigated all around here and found from their investigation that there had only been one cash sale in that area of dynamite and that was the only one found and that it had been bought by John M. Cash and then he told me that I was John M. Cash. One of the men who identified me here the other day as being the one that bought the stuff, I think somebody showed me to him, pointed me out to him. Mr. Morgan told me then this was the only cash sale that had been made in this area and that it had been bought by John M. Cash and I was bound to be John M. Cash. I don't know why he picked on me and don't know why he didn't pick on one of the other defendants. I guess that was confidential information of the FBI, I don't see how he picked on me. They must have brought this man up here from Bessemer, Alabama, and pointed me out and then he identified me. I didn't tell the FBI:

"I drove to the Powder Company alone and went to one of the office buildings and told them I wanted to buy three cases of 60% dynamite and five hundred feet of fuse and I also got a box of caps, and all of it cost a little over $21."

Mr. Morgan didn't tell me that the only cash sale had been of three cases of dynamite and 500 feet of fuse,

he didn't tell me how much and I don't know how they got that there in the statement. I don't know how any of it got in the statement. I know I didn't buy any dynamite and fuse in Bessemer. I guess in reference to the $21 they went down there and that was on the sale when they saw it. The invoice which you have shown me shows three cases of 60% dynamite, LF and the next item is 500 feet of Orange Wax Blasting Fuse and 100 No. 6 blasting caps. The total bill is $21.78, the total outside of the tax shown on this invoice is $21.35. I don't know how the FBI found out it was a little over $21. I suppose it was their confidential information.

I didn't tell them:

"That the man that sold it to me didn't ask me what I was going to do with it and I signed my name on the sales slip as John M. Cash."

That is what Morgan told me.

I didn't tell them:

"The man who sold it to me was in his thirties, rather short and heavy set with sun glasses."

I didn't tell them:

"On the road back to town I met Jones and the other man and transferred the powder and got into Jones's car."

And I didn't tell them:

"I drove back to Jones's house and spent the night and he and I left the next morning about 8:00 and got to Chattanooga about 1:00 P. M."

I didn't tell them:

"We drove to my sister's house and there transferred all of the dynamite into my car. I was afraid to take my wife in the car with me, so Jones and I brought my wife back to Copperhill and we got to Copperhill just a little before dark."

I didn't tell them that. When I came back from Atlanta I did drive Jones's car back into Copperhill and left my car at Chattanooga and took my wife back with me in Jones's car. That first part is correct but I didn't tell them that. I did drive my car, did drive my wife from here in Jones's car, and came back the next day and got my car. I didn't tell them that the next morning Jones and I left Copperhill for Chattanooga. I did do that, but I didn't tell them and I don't know how they found out.

I didn't tell them:

"Jones took me back to Chattanooga to my sister's and we arrived about noon. Jones left me and I took the load of powder in my car and drove to Dalton, through Ellijay, Georgia, and then to Tate Green's place near Copperhill, on the Georgia side."

I didn't tell them Clyde Huffman had made the trip back to Copperhill with Jones and me and he didn't come back with me. Wayne Henry and Van Jones came back. It is not true that Clyde Huffman made a trip to Chattanooga with Van Jones and me and also Wayne Henry went as far as Chattanooga but didn't come back with Clyde and me. I didn't tell them that and

that is not true. Wayne Henry did come as far as Chattanooga with me.

I didn't tell them:

"Clyde Huffman and I stopped at Green's house about six o'clock P. M. and we drove into the woods near Tate Green's house and they, Clyde Huffman and Tate Green took the powder in the woods and hid it while I was sitting in the car."

I didn't tell them:

"Wayne Henry stayed with Van D. Jones and after I got back to Chattanooga I don't know where he and Van went."

I didn't tell them that.

Van did stay in Chattanooga, when I brought his car back, or when I came back with him. Van and Henry didn't get out of the car. My sister lives on the other side of town and Wayne and Van went on to town. They came this way and I reckon they came to town. They let me out at my sister's house and Wayne Henry was with Van Jones when they left me. I didn't tell them that on the way to Chattanooga that morning to get my car, we four met at the Union Hall in Ducktown. I don't remember meeting anyone, when I went into Ducktown I met Van Jones, I came over to Ducktown and met him and came on down here and I think he was up there in Anderson's office when I met him and Wayne Henry was there, too.

I didn't tell them:

"On Sunday April 14, 1940, about 9:00 A. M. I picked Ed Simonds up at his house and took him and Sweat Woodward to Martin Simonds' house in North Carolina."

And I didn't tell them Ed got out of the car and talked to Martin a few minutes and I didn't know what he talked about. I don't remember ever taking those men to Martin Simonds' house in North Carolina. I remember taking Ed over there one time when one of Martin's boys was a corpse and that is the only time I ever remember being at Martin Simonds' house. I didn't say yesterday I didn't know where Martin Simonds lived.

I didn't tell them:

"I brought Ed back home. I stayed around the house awhile and drove to Isabella to see Wayne Henry at the picket line, and Wayne said they wanted to see the lines shot early that night."

And I don't know whether they found that out or not, or how they found it out.

I didn't tell them:

"I then drove to Clint Huffman's with my brother late in the afternoon. Clint was home alone, and I told him it was desired that the lines be blown early that night. He said he would handle the Parksville end around 9:00 P. M."

That is not correct. I told them I had never been to Clint Huffman's or Ben Cross's house and didn't know where they lived. Time after time I told them that.

I didn't tell them:

"Clint and Clyde Huffman knew where the powder was. I then went and picked up Ed Simonds and carried him to Tate Green's house and let him out and then Sweat and I returned home and went to bed."

I didn't tell them:

"A few days before the last dynamiting, which was on the early morning of Wednesday, April 24th, there was a meeting held at the Union Hall in Isabella and those present were M. C. Anderson, Martin and Ed Simonds, Earl Hubbard, John McGhee and myself."

I didn't know of their attending a meeting of that kind. These men could have been present in some meetings I attended, I don't know, but just them individuals, I never have been in a meeting that way.

I didn't tell them at this meeting it was decided to blow both lines again, and Ed was to handle the Blue Ridge end of the line and I didn't tell them the understanding was the Huffman boys were to handle the Parksville end. Nothing like that was said and I don't know how the FBI got that information.

I didn't tell them:

"On Monday morning April 22, 1940, Sweat, Earl Hubbard and I drove to Barnes Chapel and picked up Gordon Parr and stopped at Walter Bell's house, and Earl talked to him about something."

I never made a trip like that.

I didn't tell them that we then drove to Martin Simonds and ate lunch and left some dynamite there that

Earl Hubbard, Gordon Parr and I had taken from the woods, and I didn't tell them that Earl Hubbard and Sweat and I came back to Copperhill, and I didn't tell them that Martin Simonds knew the dynamite had been placed in the garage by me and I heard no more about the dynamite and had nothing more to do with it and went to bed Tuesday night about 10:30 P. M. and Wednesday morning I was picked up by Deputy Sheriff Roxie Campbell.

I didn't tell them:

"I have read this statement and it has been read to me, and it contains the truth.

(Signed) Felton M. Woodward.

Witnessed: N. H. McCabe, E. M. Hevron, R. T. Mann, Special Agents of the Federal Bureau of Investigation, United States Department of Justice."

I signed my name on every page of the statement you have there. The signature you have shown me is mine, that one is mine, and the next one is mine and that one is mine and the one on the last page is mine, and makes five signatures. I signed it five times and didn't know what I was signing. The distance between the statement that you have indicated to me was below the last sentence to my signature I would say about half an inch. They didn't give me any chance to see that last sentence and I didn't happen to see it while I was taking time to sign my name. Mann told me "there is not a damn thing in the statement that will hurt you, if there is anything in it Anderson is the one we are

wanting, there is not a damn thing in this statement that will hurt you," said "Anderson is the man we want."

I told him that I didn't know anything on Anderson and I don't know why they took this statement. When I went to Atlanta I went in Van Jones's car and went through Dalton and Cartersville, not through Dalton, the highway runs to the side, I didn't go right through the town. The best of my recollection it was Friday, April 26th when Agent Morgan gave me the information about John M. Cash signing that sales slip. I was picked up on the 24th, I believe that was on Wednesday and it was on Friday when he gave me the information. I had been in the YMCA two days before he told me that and then he told me they had checked up on all these places and he thought I was John M. Cash and I don't know whether he told any of the other defendants that or not.

(This witness was then excused.)

The next witness, W. V. (WINK) MILLIGAN, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is W. V. (Wink) Milligan. I was formerly Tax Assessor of Hamilton County for four years. I have worked at the occupation of Title Examiner for Thirty-one years with exception of the four years as Tax Assessor and two years in the army and I have always been referred to as a Title Expert or Title Attorney, but I am not a member of the Bar. I have had experience in examining titles to property in Hamilton County and Polk

County, Tennessee, and about twenty other counties in Tennessee.

I examined the title records in the Register's office of Polk County, Tennessee, to determine the owner of what is known as the YMCA building in Copperhill, Tennessee. From my examination of the records of Polk County in the Register's office, I determined in whom the title to the property upon which site the building is situated is vested. I have a certified copy of the deeds to the corporation that now owns that property according to the records of the County, the title evidence is in two deeds and I have certified copies of each of those deeds.

The first is a deed from Jesse E. McCoy, widow, to the Tennessee Copper Company, which I file as Exhibit "A" and the other is a deed from the First Church of Christ to the Tennessee Copper Company, which I file as Exhibit "B" to my testimony.

Cross examination waived.

(Witness excused.)

The defendant, ROBERT LEE RHODES, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Robert Lee Rhodes. I am one of the defendants in this case. I live in Copperhill, Tennessee, and I am 41 years old. When I was taken into custody, and later checked into the Hamilton County jail they said I weighed 155 pounds, but the most I ever weighed was 140 pounds and my weight now would be between 123 and 130 pounds. I was taken in custody on Sunday in

the latter part of April, 1940, about eight o'clock at night and was taken to the YMCA in Copperhill by Deputy Sheriff Roxie Campbell. I was held there for about ten minutes and then was taken to the city jail and spent that Sunday night in the city jail. Felton Woodward, Ed Simonds, Dave Queen and Earl Hubbard and I were in the cell together. There were two narrow bunks in the jail, they were not wide enough for more than one person to sleep on. The other three of us in the cell that night had to sit on the floor, concrete floor. I was taken out of the city jail on Monday, around ten o'clock and taken to the YMCA building by Creed Brock and turned over to two FBI Agents, Mr. Whitten and Mr. Lunsford. They carried me in a small room there and sat me down in a chair and told me these things had happened. Mr. Lunsford sat in front of me and Mr. Whitten at the typewriter, at a table, and they questioned me then. They sat me down there and started talking, asked about my family, how many I had in the family, the age of the children, and I told them and they started over this dynamiting and I told them I didn't know anything about it, that I was innocent of it. They said they knew all the story and I might as well tell them and I told them again I didn't know anything about it and they said I was a damn liar I did know that, Mr. Lunsford said that. Mr. Lunsford was writing on the typewriter at the time and they kept on writing around an hour and a half or maybe two hours. I told them about my family and that I was a member of the Union and told them I came out on strike in July, 1939. I have heard read to the jury in this case a statement which I was supposed to have signed in which

it is said I told them an individual came to my home on Cemetery Hill, in Copperhill, Tennessee, and told me another individual wanted to see me and that immediately I walked over to the other house and saw him and another individual, that one of these individuals asked me if I would help to get the plant down, to dynamite some power poles which supplied the Tennessee Copper Company with power. I heard that read but I didn't tell them that. Mr. Lunsford told me that and I told him I didn't know anything about it and he said I was a damn liar that I knowed all about it and I told him I didn't know anything about it. I heard read from the statement saying I told one of these individuals I would help to dynamite the towers, and then we drove off in his car with another individual and drove back to the Chapel and parked for a short time while one of the individuals and another individual went somewhere and returned with an auger.

I didn't tell Mr. Whitten or Mr. Lunsford that.

Mr. Whitten told me that was what happened and I told him I didn't know anything about anything of that nature and he told me I was telling a lie, that I did know.

I didn't state that we picked up an individual at the picket line in Copperhill when we first left that individual's house and that I noticed some dynamite and fuse on the floor of the car. I don't remember whether they told me about the dynamite on the floor of the car or not. I don't remember being questioned along that line.

I didn't say that two of these individuals returned with an auger and we drove back towards Copperhill and

about a mile out of town we turned off on a dirt road and drove about half a mile to where these individuals and I got out of the car and the others drove away. Mr. Whitten told me that was what happened and I told him I didn't know anything about it and he told me I was lying, that I did know about it and he continuously told me I was lying.

I didn't tell either of the agents that we walked down the mountain until we three came to the power line known as the Blue Ridge line and that I carried the auger and the other men carried the dynamite and fuse. Mr. Lunsford told me that was what I did, I couldn't tell you the number of times but it was a number of them and I told them I didn't know anything like that and they told me I was telling a lie.

I didn't tell Mr. Whitten and Mr. Lunsford any of the things that thing contains about dynamiting, but they told me these things there and I denied them all the time and when I would deny them they would tell me I was guilty and they knew the whole story of it and I imagine I was called a liar fifteen or twenty times or maybe more than that. I didn't have anything to do with dynamiting power towers at any time and they kept me up there an hour and a half or two hours and when they got through Mr. Lunsford got the paper out of the typewriter and brought it over to me and told me to sign it. The best I remember he told me sign this and they would take care of me and said that they didn't have me charged with anything, and said he had the story that I was implicated in the dynamiting and they told me to sign that and they would see that I got out of it, it wouldn't cost me

anything and I would be turned loose. They said I probably would have to come to Chattanooga in the next day or two and said they would see some official, but I don't remember who the official was, but they told me one or the other, to plead guilty and that the official would take care of me, would see that I was taken care of. They told me to plead guilty when I got before this official, whoever he was, and they said they would call the official before we got down there, or would be down there at the time and would arrange for a small bond and anybody could sign the bond. He said there were two classes of defendants, and if I didn't plead guilty I would be classed with Anderson, I would be in Anderson's class and sent to the penitentiary for several years. He didn't state how many and he said if I did what he said I would be turned loose and go back to my family. I later met the United States Commissioner, James H. Anderson, at Chattanooga, I was taken to the Hamilton County jail with the other defendants and put in jail there and somebody appeared there and a proceeding was had there and I was given an opportunity to plead guilty or not guilty and I plead guilty because the men said to and I thought I had to do it. I signed the statement because they told me to sign it, I was in the custody of these men and had been there sometime and couldn't see a lawyer or anybody. Neither Mr. Lunsford or Whitten informed me that I didn't have to do it, they didn't tell me I didn't have to do the things they told me to do. I was never in court before. They didn't tell me the statement would be used against me in court and I didn't read the statement was not given an opportunity to read it and nobody read it to me. I do not

know what Mr. Lunsford was writing while Mr. Whitten was talking. If Mr. Lunsford had written what I told Mf. Whitten there would not have been anything in that statement that implicated me in any dynamiting.

Cross Examination by Mr. Frazier.

I was arrested on the 28th of April by Roxie Campbell and that was on Sunday night and I talked to these FBI men on Monday night and that is the only time I talked to them and I talked to them about an hour and a half. I didn't give them a statement but I did sign that paper there. It was shown to me and that looks like my signature on it. That looks like my signature on two pages. The first time I was taken to the YMCA Mr. Whitten and Mr. Lunsford talked to me, talked to me in a room by myself most of the time, but someone would come in now and then. I didn't know who they were or anything, but nobody else examined me except those two men. I remember Mr. Plaxico came in one time and he didn't examine me. Mr. Whitten and Lunsford were the ones who examined me and took the statement from me and they are the only ones who ever examined me and that was on Monday night and I was arrested the night before. Prior to the time I was taken up there and questioned I had not told Roxie Campbell, and Deputy Sheriff Rose, I was guilty of participating in the dynamiting of these towers and I want to make a statement. Campbell and Rose had been around the jail practically all day but I had not told them I wanted to make a statement. I didn't make any statement in which I admitted my guilt or connection with the transaction, I did sign that

paper but I didn't know what was in it. Both of the FBI men called me a damn liar and they treated me pretty mean and was telling them the truth and they would tell me I was a damn liar. Mr. Lunsford sat at the typewriter writing, and Mr. Whitten, the other one, was just about as mean as he was, both of them talked to me at times. I don't know that Lunsford turned around and asked me questions but he would ask me questions. When he would call me a damn liar he would look at me I reckon and I reckon he had to turn away from the typewriter. I imagine they called me a damn liar fifteen or twenty times. I didn't say definitely fifteen or twenty times, I said probably that many times, but didn't say definitely, I said probably fifteen or twenty times. They did do it and I didn't count the times. I was called a damn liar very often. They didn't do anything else to me, didn't pull my hair or push me around and didn't hit me or threaten to strike me. Mr. Whitten didn't do anything to me except call me a damn liar and the other man was writing on the typewriter the things I told him—I didn't tell him anything. I told them all the time I didn't know anything about it and I don't know whether they wanted me to verify the information they had or not. I was present when that statement was taken and I signed it and it is not true. I had nothing to do with the dynamiting and didn't tell Roxie Campbell about any connection with it and wanted to make a statement, and I didn't tell Deputy Sheriffs Rose and Campbell the things written in this statement before I went up there. I guess I told Mr. Whitten on the 29th of April that I was 40 years old, if he asked me I told him, and that was my age.

I told him I was married, that was true, and I had six children and that was true and I told him their ages, 17, 12, 8, 7, 4, 3 and that was true. I told Mr. Whitten and Mr. Lunsford that. I had never seen Mr. Whitten or Lunsford before I went to the YMCA that Monday night, never talked to them. I told them I was a lead burner's helper and all that part of it is true. I didn't tell Mr. Whitten I was a member of the CIO several years, the CIO was not mentioned. I told him I belonged to the International Union of Mine, Mill & Smelter Workers and that they were affiliated with the CIO, but I am not definite about that. I am not a member of the American Federation of Labor, but am a member of the Union of Mine, Mill & Smelter Workers and I think that is affiliated with the CIO. I told them I went out on strike on July 14, 1939. I didn't make the statement to them "during the latter part of March, 1940, Sweat Woodward came to my house on Cemetery Hill at Copperhill and told me that his brother Felton Woodward wanted to see me."

I know Sweat Woodward and I know Felton Woodward, but Sweat didn't come to my house and tell me Felton wanted to see me. That never occurred and I didn't tell these men that and I don't know whether they figured that up that Sweat Woodward told me Felton wanted to see me or not. I didn't tell them that and I am positive I didn't tell them that. I have been to Felton Woodward's house a number of times.

I didn't tell them that I walked over to Felton Woodward's house and saw Felton and Ed Simonds. As I stated

I have been to Felton's house a number of times but was never there when Ed Simonds was there.

I didn't go there the latter part of March when Ed Simonds was there and didn't tell the FBI men that.

I didn't tell them that Felton asked if I would help them get the plant down and said he wanted to dynamite some power poles that supplied them with power. I told them I was not guilty of the crime and had nothing at all to do with it. I told Mr. Townsend that they didn't tell me what I was charged with, they didn't tell me I was charged with anything. I said Mr. Whitten and Lunsford told me I was not charged with anything and that is what they did say at that time, and I told them I was not guilty of the crime and they accused me of being into this all the way through. I didn't tell these men that I told Felton Woodward I would help him dynamite the towers and that then we drove off in Felton's car with Ed Simonds, on the latter part of March.

I didn't tell them:

"We drove to Barnes Chapel, near Gravel Gap, and parked for a short time while Ed Simonds and David Queen went somewhere and returned with an auger."

I was not there and couldn't tell you whether that happened or not, I don't know whether Ed Simonds and Felton Woodward were at Barnes Chapel or not and had previously picked up David Queen at the picket line in Copperhill, and I didn't tell the FBI men that and we didn't go by and pick him up. We didn't go by and pick up Queen and let Sweat Woodward take his place. I didn't go to the picket line, I was not used on the picket

line and never worked on it during the whole strike. I didn't say to Mr. Whitten and Lunsford that when we first left Felton Woodward's house I noticed dynamite and fuse on the floor of Woodward's car. I was not in his car on that occasion or any other occasion when I saw any dynamite or fuse in the car. I have been in Woodward's car a number of times, been in his car in the last two or three years at different times and I can't tell you whether I was in his car the last time before the dynamiting of these towers or not. I don't think I was in his car along then, on the day of the dynamiting, or three months before the dynamiting. I don't believe I was in the car along there. I came down here last Sunday.

Back in 1940 I rode from Ducktown, or to Ducktown to meetings at Copperhill with him, the meetings were at the Ducktown Union Hall and Mr. Anderson was there. Probably part of the other defendants were there and part were not. I can't give you the date, I don't know whether it was April 1st or not, I was at lots of meetings. I was not at a meeting in Anderson's office on April 13, 1940, or on April 18, 1940. I couldn't tell you whether we had a meeting at the Union Hall on the 18th or not. I attended practically all the meetings and they had a meeting every week, sometimes more. I didn't state to Mr. Whitten and Lunsford:

"After Ed Simonds and David Queen returned with the auger we drove back towards Copperhill about a mile out of town and turned off on a dirt road and drove about half a mile where Ed Simonds, David Queen and I got out of the car and Felton Woodward drove away."

I didn't state that at all and that didn't take place and is not true.

I didn't tell them:

"We walked down the road until we came to the power line known as the Blue Ridge line and I think I carried the auger and the other two men carried the dynamite and fuse." I am sure I didn't tell them that, I didn't know anything about it, and it is not true and didn't happen and I didn't go down there. I had never seen these FBI men before and I don't know whether they had anything against me or not. I don't know whether 10,000 people live in Polk County or not. I had never seen these men before, these FBI men.

I didn't tell them:

"When we came to the power tower about midnight on March 31, 1940, on Sunday Queen and Ed Simonds and I used the auger to bore holes in the wooden tower to hold the dynamite, and Ed told us where to bore the holes, and Ed also put the dynamite in the holes after we bored them and fixed the fuse to both legs of the tower and lit the fuse, about twenty or thirty feet long."

That didn't occur. I don't know whether the tower was blown up or not, I was not there and don't know anything about it.

I didn't tell the officers:

"After lighting the fuse we three walked down the railroad and got to the Copperhill high school before we heard the explosion blowing up the tower that we had planted with dynamite."

I didn't tell them:

"When I heard the blast go off Ed Simonds said that we was an hour late. I figured he meant our blast was arranged to go off about the same time as the one on the Parksville line, as the power tower was blown up just a little while before the one we dynamited."

I didn't tell them that occurred and didn't know anything about it.

I didn't tell them:

"Several times after the dynamiting I told Ed Simonds and Hubbard that I was through helping dynamite power towers."

I didn't tell them that I told Simonds or Hubbard either one that I was through helping to dynamite towers. I had not started and I didn't know anything about it.

I didn't state to them:

"Since that time I have not had anything further to do with dynamiting and am very, very sorry I was led in that night when I helped."

I didn't state that and I never did have anything to do with it, I didn't participate in the dynamiting on April 13th, I never have had anything to do with it, nor any of the dynamitings.

I did sign that statement you have there, and that statement is not true. The men called me a damn liar a number of times, but they did not say it was a statement, but I did sign that statement.

On March 31st or the early part of April 1st I did not drop the auger shown me as an Exhibit off of the trestle in the Toccoa River. I do know where the trestle is, but I didn't drop an auger in there and I couldn't tell you whether that auger had been used that night or not, I didn't know what was used any night. I didn't drop the auger in and Ed Simonds was not with me when I droped it in, no such talk as that was going on and it didn't happen and I didn't drop it in there with Ed Simonds. My weight runs around 125 to 130. The record at the Hamilton County jail showed I weighed 155 when I was weighed in there and I weighed that according to the record, but I never did weigh that much and weigh about 130 pounds now.

(This witness was then excused.)

The defendant, ROBERT LEE BALLEW, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Robert Lee Ballew and I am 32 years old, was the 23rd of October. At the present time I am boarding at Isabella, Tennessee, I am married and have two children, and formerly worked for the Tennessee Copper Company. I worked there from 1927 to 1929 and from 1936 to 1939, and in July, 1939, I came out on strike. I am a member of the International Union of Mine, Mill and Smelter Workers.

I was on active duty at the strike up until the 1st of October and then I went to West Virginia, stayed there until the latter part of November, working in the coal

mines. I didn't come back to Isabella and stay long, stayed a couple of days and went to the farm, at Edna Carter's in Cherokee, North Carolina. It is close to Culberson, North Carolina, and is about twelve or thirteen miles from Isabella. Edna Carter is my first cousin. At that time her family consisted of her brother, 15 years old, and her deceased husband's sister was there, 23 or 25 years old, and a brother about 22 and she had four children of her own. I went there around about the first of February and boarded there and worked for her. My family was at Isabella except on week ends they stayed with me, either came up or I would go down and stay with them.

The Tennessee Copper Company owned the house, in which my wife and children lived. I was arrested on Tuesday, April 30, 1940, about three o'clock in the afternoon. Agents Lunsford, Whitten and Clyde Dale, a deputy sheriff of Polk County, came by and stopped in front of Edna Carter's in North Carolina. I was in the front room, I had been clearing up ground we were getting ready to tend and I was in the front room drying my clothes. My wife had just left and Edna, my cousin, went with her to catch the bus and had just returned and I had been out from the house and got wet and come in and I was in the front room putting on some dry clothes and he came to the front door and knocked and Edna Carter went to the door. He asked if Edna Carter lived there and she told him yes and he asked if Robert Ballew stayed there and she said yes and he said I want to see him a minute and she said all right, he is in the front room. He came to the door and said are you

Robert Ballew and I told him yes and he said come on let's go and I said go where. He said we want to question you a while and I said what about and he said about some dynamiting and I said I don't know about any dynamiting. He identified himself as a Federal Officer and I asked him to have a chair until I finished changing clothes and he said I didn't need to change clothes, let's go and he took me by the arm and we went out and Edna asked him to wait until I changed clothes and he said he don't need to change clothes, we will bring him back after awhile. She said wait a minute until he gets some money. He said he don't need any money we will bring him back. I pulled back and they grabbed my arm tighter and said come on and I said turn me loose I can walk but he didn't turn me loose and took me to the car and said have you got a gun or knife or anything and I said I have a knife and gave it to him and then I realized I was under arrest. A couple of weeks after I got out of jail here I got my knife back from Roxie Campbell. When they got to the Tennessee line they slowed down and I was sitting on the back seat with Agent Whitten and Clyde Dale and Lunsford were on the front seat and Dale was driving. When we got to the Tennessee line, the Tennessee-North Carolina line, at the line it runs off the asphalt and goes onto the concrete right across on this side of the Mountain. They slowed down and the first thing I knew they had a pair of handcuffs snapped on me and said now God damn you, you will talk and they took me to the YMCA at Copperhill. Whitten put the handcuffs on me and said now God damn you, you will talk. He made sev-

eral smart remarks and I wouldn't answer them. Otherwise, I knowed I was in Polk County and knew I had to do what Polk County said or otherwise, that they would do anything they took a notion to do. They took me to the YMCA at Copperhill. When I got to the YMCA, when I first came in Roxie Campbell is the first man who talked to me, questioned me, and told me to come on Robert, tell them what they want to know, said we have not got anything against you or anybody else, said Anderson is the son-of-a-bitch we want. I wouldn't say any FBI men were present when Roxie Campbell made that statement. He said he was not satisfied with coming in here and getting you boys out of a job, he wants to get you in the penitentiary. I said I don't know anything Roxie and he said don't tell me that, I have been a friend of yours, and I said you never did act as a friend, you even had parties guard us while we slept. That was before I talked to the FBI. They had been guarding us when we slept and that is what caused me to go to the country and farm, we couldn't step out of the house without being arrested and stopped on the highway. When we went into the YMCA Lunsford and Whitten came in and questioned me. They commenced tell me they wanted me to tell and I said I didn't know anything to tell and they questioned me there from around four o'clock until six o'clock and during this time I didn't tell them anything, because I couldn't tell them anything, but I did tell them I didn't know anything about it. On that occasion they asked me how old I was and I told them and then they asked me about my family, the members

of it, how many I had in the family and the age and where I lived and worked. I told them I worked for the Copper Company and told them I came out on strike and they got over on the subject of dynamiting.

I didn't tell them that on Sunday evening, April 21st, I was on the picket line at the Tennessee Copper Company at Isabella, Tennessee, when Earl Hubbard came to me and told me he wanted me to do a little scouting job. I couldn't tell them that, I hadn't been on the picket line in two months. I know Earl Hubbard, knew him when I saw him but to say know him I did not. I didn't tell them Earl told me to meet them at Martin Simonds' house on April 22nd, 1940, and I didn't tell them I left at about 8:30 that night. I didn't tell them I walked from my house at Isabella to Martin Simonds' house on April 22nd and arrived there about 8:30 at night and didn't tell them Gordon Parr was there and also Martin Simonds when I arrived. I didn't know Gordon Parr at that time and didn't tell them also that Martin Simonds was there. I didn't tell them Ed Simonds arrived at the house about nine o'clock that night and didn't tell them that we talked about an hour after Ed Simonds arrived. I didn't tell them I was there at all, but told them I was not there. I didn't know Queen at that time and didn't tell them I saw Dave Queen. I might possibly have seen Queen and Gordon Parr before that time, but wouldn't know them. I worked at Isabella and I understood they worked at Copperhill. There were two companies at Isabella, the Isabella Copper Company and the D. C. & I. Company, and they didn't associate with one another. I didn't tell them I left Martin Simonds' house

about ten o'clock that night and I didn't tell them that Ed Simonds and I had two tow sacks and put 101 sticks of dynamite in them, which was by the side of Martin Simonds' garage. I was not at Martin Simonds' garage and was not about his place at all then. I was there when Martin's boy died, I was a pallbearer, he was a Union member and we gave him a Union funeral and I was a pallbearer and that is the only time I have been to Martin Simonds' in fifteen years, and the only time I was ever in the house where he lived at the time this trouble came up. He still lives where he did then. When I went to his house about fifteen years before that he lived just across the Mountain at the Tennessee-North Carolina line, an old place called the Stewart place and it is torn down now, I used to stay with Martin Simonds when I was a little boy. I didn't see any dynamite anywhere, or have any connection with Martin Simonds or Ed Simonds or dynamite any power lines and didn't tell anybody I did, didn't tell Lunsford or Whitten. I didn't tell them that on that occasion David Queen and Gordon Parr each had a shot gun and I didn't tell them about the four of us walking through the woods towards Wolf Creek or Hot House Creek, and about half way between the mouth of each Creek, where we spent Monday night. I know where Wolf Creek is, I live between it and Hot House Creek and have all my life and was born at Wolf Creek, Georgia, born and raised there until I was fifteen years old. I didn't tell them we spent Tuesday, April 23rd, in the woods pretty close to where we spent the night. I didn't tell them that the place where we

stayed was just across the hill from the Blue Ridge line, I don't know where the Blue Ridge line is, and didn't say that. I didn't tell them that on Tuesday night, April 23, 1940, Ed Simonds, Gordon Parr, Dave Queen and I walked over to the first power tower which was made of steel and Ed and I put about twenty-five sticks of dynamite on the inside corners of each of the four concrete posts and set the fuse. We didn't do that. I didn't tell them Ed had a cigarette lighter and had the three fuses hooked up to a fourth fuse and lit the fourth fuse and I didn't tell them Queen stood guard while we worked and I didn't tell them it was about one o'clock in the morning of Wednesday when the dynamite went off. I didn't know when it went off and didn't know who set it off, and didn't tell them I was about 200 yards away when the explosion occurred. I didn't tell them all four of us walked back to Martin Simonds house and got there about daylight and didn't tell them that we had breakfast there and after sitting around a while I walked to Edna Carter's house. I didn't tell them it was about twelve miles from Martin Simonds house to where the power towers were dynamited. I don't know where the power tower was dynamited and wouldn't know how far it is from Martin Simonds' house to the place where the tower was dynamited. I have never been to the place where the dynamiting was and can't say. I didn't tell them that was all I knew about the dynamiting and the only thing I took part in. I didn't take part in any of it.

I didn't tell them I ever attended any meeting of the CIO or any other form of meeting when dynamiting was

discussed. I didn't tell them I read through the statement and it is true. I hadn't read the statement, didn't make a statement, and told them at the preliminary hearing I made no statement. That looks like my signature but that is not the way I sign my name. I sign R. L. After Whitten and Lunsford talked to me in the YMCA building in Copperhill they didn't say anything about taking me back home, after they got through trying to get me to talk to them different, they turned me over to Bill Rose, a Polk County Deputy, and said he is your prisoner now, do what you want with him, and they took me to the city jail about thirty feet from the YMCA. At that time they didn't prepare any statement or anything of the kind and didn't say anything to me about signing a statement. I was taken out of the city jail around eleven thirty o'clock that night, the night of the 30th of April, and brought to the Hamilton County jail and stayed in jail all night in first one cell and another, one of the jailors came in and said is your name Ballew and I said yes and he said they want to see you out in the hall a minute and I went out in the hall and Whitten and Lunsford were out there and they said do you want to go back home and I said I would like to. They said all right we will go to the court house and you can get ready to go home and they brought me to this building here and took me to one of the rooms in yonder, I wouldn't say which one, and I stayed there and they went out and stayed awhile, and said we will be back in a few minutes. I just sat there and Whitten and Lunsford went out of the room a few minutes, I would

say, probably five minutes, and came back and had a stack of papers, looked like one of those yellow papers and said they wanted me to go home and said we will release you if you sign your name here. I wouldn't be positive they told me how to sign it, they said sign your name here and you can go home. I knew I was not pleading guilty to anything and didn't know anything and hadn't been in any kind of trouble or anything and I had been there all day and night and there hadn't been any charges against me and they said we will let you go home, said sign this and we will be ready to go and I signed it. They didn't read it to me and I didn't know what was in it or what it contained. They said sign this and held it out to me and as quick as I signed it they started out of the room and the Marshal with two negroes handcuffed came in and got me and handcuffed me with them and took me back to the Hamilton County jail.

On Sunday, April 21st, I was at Edna Carter's house. On that occasion it happened to be Alonzo Curtis, who lives above there, he and his wife had been to Copperhill Saturday evening and said the company is going to put all the people out of their houses. My wife's sisters' little brother-in-law came up to where I was and me and my wife was out at Edna's and he said they are going to have to move and I went down to see; went down to Isabella, me and Edna, she stayed all night Saturday night and Sunday morning and at nine o'clock we went back to her house. On Sunday, the 28th of April, she had a farm down the creek four or five miles from where she lived, which is in Georgia. I went down there to a renter who had rented the place to tell him to clean

out a ditch and Edna Carter told me to do that. My wife was up there on Sunday, April 28th, and she stayed until Tuesday, just before they came and got me. I was arrested on Tuesday, the 30th. I remember these two Sundays previous to my arrest on Tuesday. The first time I knew anybody accused me of having signed any statement was at the preliminary hearing. I found out then and denied it then. I made no statement. They stopped at the Tennessee line when they brought me from North Carolina and put handcuffs on me and the way you can tell when you reach the State line, it is asphalt road in North Carolina and concrete on the Tennessee side and there is a big sign there about as big as that table there (3' x 8').

Cross Examination by Mr. Frazier.

I live at Isabella, in Tennessee, but was born and raised in Georgia. I came to Polk County in 1927 and worked there two years at the Copper Company and then moved to Isabella, and left and worked for the Ducktown Chemical & Iron Company until July 13, 1939, that company at that time was operated by the Tennessee Copper Company. I was arrested on April 30th. Mr. Whitten and Mr. Lunsford came to Edna Carter's where I was working her farm on April 30th, in company with Clyde Dale. Lunsford came to the door and knocked and the car stopped and I was drying, cars go by there practically all the time, the road goes right by the side of the house, goes into Sweet Gum, Georgia, and a car drove up and stopped and somebody knocked and she went to the door, naturally it was her place to go to the door and I was in the room

drying my sweater, I had been out working and got wet, and he asked her if Edna Carter lived there and she said yes, sir, and he said does Robert Ballew stay here and she said yes, sir, and he said we wanted to see him and she said come in and he came by her, but before he got in the door he said Robert and I said yes, sir, and he came to the door and said is your name Robert Ballew and I said yes, sir, it is and he said he wanted to talk a little and I said what about and he said about this dynamiting. I said you have got no right to make me talk with you, have you got a warrant, show me a warrant and he said I am a Federal Officer and he showed me a badge and said let's go, I don't need any warrant. Lunsford came to the door and Dale stayed in the car and Whitten did too. They didn't tell me they wanted to take me over to the YMCA to talk to me, but did say they would bring me back. They took me to the YMCA at Copperhill and I was probably over there from four to six o'clock on April 30th and was brought to Chattanooga the same night. I wasn't in jail up there and spent the night in Copperhill, I was brought to Chattanooga that night about 12:30, throwed in jail and stayed in one cell until about four o'clock and was taken out of it and put in another cell in the Hamilton County jail. I don't know why I was moved out of the first cell for, reckon they just wanted to move me around. The other prisoners were not moved, just me by myself. I was not in the cell by myself, I guess there were 25 or 30 in there laying around on the floor and bunks and that was about four o'clock in the morning. Mr. Ricketts and that gentleman there that stays in here brought me to Chattanooga. I didn't know

him then, I do now know who he is and he is a Marshal and he brought me to Chattanooga and put me in the Hamilton County jail. I didn't give Whitten and Lunsford any statement on April 30th. I didn't know what they wanted with me. The next evening about four o'clock they came and asked me if I wanted to go home. I was not present at the arraignment of the men charged with dynamiting power plants. I was arraigned on Thursday on the 2nd or 3rd. I talked to these men on April 30th and May 1st. The statement which you handed me is dated May 1st, 1940. That handwriting on the statement could be mine but that is not the way I sign my name. I probably signed Robert Lee Ballew, they had a sheet of paper something like this here, I wouldn't say it was that. They had a bunch of papers like this and pushed the paper up like this and said sign this paper here. They had a yellow paper up like this and said sign this paper here. They had the yellow paper like that there, something like this and turned up the corner and said sign that and just had a little bit of it showing. I wouldn't think their names were signed to it then. I don't know whether they had it covered up but the line I signed Robert Lee Ballew, they said you are ready to go when you sign this. They just put a piece of paper over it and gave it to me to sign and I signed it and that is what happened and that took place in one of the offices here in this building, I don't know one room from the other in here, only this one, but it was here in the Federal Building at Chattanooga and on May 1, 1940, the day after I was brought down here. I didn't ask to be put in the cell with Ed Simonds after I was brought down here but was put in the same cell

with him the next day, I didn't ask to see him, and I didn't say I wanted to talk to him, I wasn't allowed to talk to anybody. I was put in the same cell with him the next day, but we wasn't allowed to talk to one another in the jail or anywhere else. We wasn't allowed to talk to others if you wanted to talk to them, the jailers told me that. They were in the cells there and four or five guards going up and down to see. We were guarded up and down the steps, guarded up and down like convicts, they marched us down to the table where we were fed and the only time I seen anything was when we were taken out of the cell and taken to the dinner table. I wasn't in the cell with anybody, only the fellows in the other cells, and I didn't know any of them. I didn't ask to be put in the same cell with Ed Simonds, and I wouldn't say that I was in the same cell with him, I can't say that he was. When I was changed from one cell to the other I don't know that he was in the same cell. I didn't know the men I was put in with, had never seen them before, nobody from Polk County was in there. The last place I was put in there some boys I know, I changed places three different times. There wasn't anybody in the cell I knew that I was put in the first two times. I was put in the cell with Ed Simonds I think the next day after I was arrested, and I signed the paper the next day. I don't know that I talked to Ed Simonds, and I wouldn't say he was in the same cell and he was not present in the Federal Building when I talked to the officers and didn't see him there. I didn't talk to Lunsford or Whitten down at the Federal Building but a few mintes, they asked if I wanted to go home and went out

and were gone about five minutes and came back. Agent Whitten and Lunsford brought me from the County Jail to the Federal Building and took me to some room down here and told me to sit down and went off and left me. They didn't leave anybody with me and they said they were going out and stayed about five minutes and came back with a stack of papers and said sign this and you will be ready to go. They never questioned me, they put the yellow paper over it, one over the other, or over several of them, and I didn't think anything about it, they told me I could go home and I knew I hadn't done anything and hadn't been charged with anything and there was no charge against me. They told me there was nothing against me. There is no government witness on the stand said they knew where I was at. If the Deputy Marshal arrested me with a warrant and brought me to Chattanooga, I never saw it. Ricketts brought me down here but there was no warrant served on me. He got me out of the city jail at Copperhill and brought me down here the same night I was arrested, and put me in the Hamilton County jail. Nothing was said about questioning me at the Federal Building, nobody cussed me out and I was not abused or threatened and they gave me to understand they wasn't after anyone but Anderson, that he was the man they were after. Whitten and Lunsford both told me that at Copperhill, and I also talked to Roxie Campbell. Whitten and Lunsford were the only agents I talked to and they told me that they were not after me at all, that Anderson was the damn man they wanted and they didn't say Mr. Anderson. They didn't cuss me. I stated

awhile ago I didn't give any statement and I said at the Commissioner's hearing that I didn't give any statement. I wasn't called on to testify at the preliminary hearing that is right, but they were all up there and they called off the names at the preliminary hearing and I didn't testify. My lawyer told me to sit down, they had the statement they said they were going to read and they read my name out and I said you have got no statement from me and I still say that, but at that time I didn't testify. I was down here at the Federal Building probably ten minutes. I told Mr. Whitten and Mr. Lunsford I was 32 years old when we were at Copperhill, also told them I was married and had two daughters and had been working for the Tennessee Copper Company. I can't say whether I told them for the past ten years or not, I wouldn't say. They asked me at Copperhill if I went out on strike on July 14th when they took me in and fingerprinted me. I absolutely did not tell them:

"Sunday evening April 21, 1940, I was on the picket line at the Tennessee Copper Company at Isabella, Tennessee, when Earl Hubbard came to me and told me he wanted me to do a little scouting job. He told me to be at Martin Simonds' house the following Monday night. I walked from my house at Isabella to Martin Simonds' house on Monday April 22, 1940, arriving there about 8:30 at night. Gordon Parr was there when I arrived and also Martin Simonds. Ed Simonds arrived at the house about nine o'clock that night."

I didn't tell them:

"After Ed Simonds arrived we left Martin Simonds' house about ten o'clock that night. Ed and I had two tow

sacks and put 101 sacks of dynamite in them which we found by the side of Martin Simonds' garage, also we picked up about 50 feet of fuse which was with the dynamite."

I didn't tell them that David Queen and Gordon Parr each had a shot gun, I didn't see them, and I didn't tell them that we all four walked through the woods towards Wolf Creek and Hot House Creek to about half way between the mouth of each creek where we spent Monday night. I didn't tell them that on Tuesday, April 23, 1940, we spent the day out close to where we spent Sunday night, at a place just across the hill from the Blue Ridge power line. I didn't tell them Tuesday night, April 23, 1940, Ed Simonds, Gordon Parr, David Queen and I walked over to the first power tower which was made of steel and Ed and I put 25 sticks of dynamite on the inside corner of each of the four concrete posts and set the fuse.

I didn't tell them that Parr and Queen stood guard while we worked. I don't know whether they did or not, I didn't tell them that.

I didn't tell them:

"It was about one o'clock Wednesday morning that the dynamite went off. We were about 200 yards away when the explosion occurred and we all four walked back to Martin Simonds' house and got there about daylight. We had breakfast there and after staying there a few minutes"—

I didn't tell them:

"I walked to Carter's house Wednesday morning. Ed and Parr and Queen were to meet me out in the woods, but

Queen gave out and went back to Martin Simonds'. It was around 12 miles from Martin Simonds' house to where we dynamited the power tower."

I didn't tell them that this is all I know about the dynamiting and the only thing I took part in. I didn't take part in any dynamiting.

I didn't tell them I had never attended any meetings of the CIO. I did attend meetings up until October, practically all of them, October, 1939. I didn't attend any more, I left Ducktown and went to West Virginia. I don't know who the Marshal was that took me back to jail after I signed that paper, there were so many of them. Mr. Ricketts is the only one I know. I can't identify the particular Marshal, Ricketts is the only one I know. I don't know Mr. Brown and I wouldn't think it was that man, I think I would remember his face and I don't think that is the man and I can't say whether it was that one. I can't describe him, after I had seen they tricked me and told me a lie I don't remember what all was done. After they tricked me I seen there wasn't anything to what they said. They wouldn't have put handcuffs on me when they told me I could go home, I knew then. I did know I hadn't told them anything but after they told me I could go home if I would sign that, I knowed then after they put the handcuffs on me. I thought it was some kind of order I had to sign to get my release. I thought I had to sign the release, I was not in jail. They told me I didn't know anything about it and they were not going to question me and would let me go home and I thought I was signing a release. When they had me in jail we had to sign everything we got there, had to sign it. I did sign a note to

see a lawyer and had to specify which one I wanted to see. We had to sign a note for everything we got. If we got anything from downstairs we had to sign a note for it. We didn't have the privilege of getting a Coca Cola. You would have to sign an order for smoking tobacco or stuff and get it as you came up. They allowed us to do it provided we had the money, if we didn't have it we did without. I didn't have a dime. I didn't say I signed an order for cigarettes, I did sign to see a lawyer, the jailer came and got it and told us we didn't have to see him unless we wanted to. I don't know the jailor's name, that little peaked face one that was up here. The note I signed was a note specifying what lawyer I wanted to see, Baker, Townsend or Hunt, and I did specify. I didn't expect the jailor to be able to produce him without being able to tell who he was but I understood he was in the building wanting to see us all and I wanted to see him. He signed his name on a card. He was there for that purpose to see us all as I understood. The jailor told us that morning that some lawyers were there and if you boys don't want to see them you don't have to and if we wanted to see anybody we had to write an order specifying which one you want to see. I specified who I wanted to see and saw them and that was after I signed this piece of paper. I won't say that I don't know a man named Earl Hubbard. I didn't know Dave Queen, I did know Anderson. I wouldn't say I have been in his office many times but I have been to his office probably once or twice. I was not there on March 31st, April 13th or April 18th. I can tell you one occasion I was there if you want

to know. When we were trying to get relief in there and the Polk County deputies in there were getting the commodities, we would have to sign for relief there to get the surplus commodities, the men for relief; they wouldn't let them bring it in. We had to sign that we were willing to take a WPA job or anything else before we could get relief before we would go back to work with the scabs. We didn't have to go to Anderson's office and sign up at Anderson's office that we would take a WPA job. Mr. Anderson got the cooperation of the agencies and we had to qualify as Union men being out of work. Anderson was helping get the men on relief so that they could get the surplus commodities. Anderson was a citizen of the United States I reckon as long as he was living in it. I went to Anderson's office to sign up and I was willing to take a job on the WPA and which I was, and that was not after we were cut off from relief from the WPA, we had never been on it. I would have taken a job on the WPA before I would have scabbed and violated my oath and taken another man's job. I had never been on relief theretofore, I tried to sign up and would have gone on it before I would have went back to work. The commodities had been cut off, the commodities which the Government had sent in there. They were holding up and wouldn't let them come at the Ducktown court house. That is groceries that were being issued to strikers and other people too and they were stopped. I wasn't getting relief but I could have got it if I wanted it, but I didn't need any.

I never made any statement at all and didn't see what was on the paper I signed. There were three or

four yellow sheets of paper over it and that occurred in this building, but not in this room, and in the presence of Whitten and Lunsford and nobody else was there. I didn't walk off because I hadn't done anything and there was no reason to walk off. I waited because they told me to wait. I was not guarded there, they went off and left me. These men did tell me in North Carolina that they would take me back and they never offered to take me back.

(This witness was then excused.)

The witness, MRS. EDNA CARTER, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Mrs. Edna Carter and I know Robert Lee Ballew and am related to him. I live in Cherokee County, North Carolina, about half way between Copper Hill and Murphy. I own a farm in North Carolina and also one in the State of Georgia. During the early part of 1940 Robert Lee Ballew lived at my place. He came there and I employed him to make a crop for me that summer on the shares and he came there about the first of February or last of January and stayed through the season, was to stay there through the season and make a crop for me that summer on the shares. I am a widow and have four children and my husband's brother stayed with me but was not with me at this time and I didn't have anyone to make a crop for me and I got him to come up there. Robert Lee Ballew boarded in my home while he worked there. I remember the occasion when somebody came and took Robert Lee Ballew

into custody, I didn't know the man that did that. They came there in an automobile, there was three in the automobile but only one that came in the house.

He come to the door, he knocked and I went to the door and he asked me if it was where Edna Carter lived. I told him yes, sir, he didn't tell me who he was. He asked me if Robert Ballew stayed there; I told him, yes, sir, and invited him in. He first asked where he was, I said he was there and he said he wanted to see him. I invited him in; he came on in and he told Robert, said, we have come after you, said you will have to go with us, and he asked him did he have a warrant and he said he didn't need no warrant, and he asked him what he was charged with, and he told him there was a Federal man, said they would come—they was investigating this dynamiting, and he would have to go with them, and he asked them for authority. He told him it was the FBI and he took him by the arm, and he had been at work and it was raining that day, and it was wet, and he started out with him and he told him to let him get a sweater, get him some clothes and he told him he wouldn't need any clothes, he asked him then how long would he be gone, and he told him probably an hour or two hours, they would be through with him at the most. I knew he didn't have any money and they was taking him to Copperhill, and I started to get him some money, and I asked if he didn't want some money to come back on, you know, and he said they would bring him back when they got through with him, said they would bring him back, so I didn't give him any money.

The man who seized his arm there didn't turn him loose after he took ahold of him and they didn't bring him back. It was on Tuesday, between two and three o'clock when he was arrested the best I remember. While Robert boarded up there during the week he would go home if he went home part of the time and part of the time his family was up there with him. They would be there sometimes two weeks at a time and spend the week-end and go back but when he went home he would go on Saturday evening and come back Sunday evening. The Sunday before Robert was arrested he was there with me and I sent him down to this other farm and had him to instruct my renter as to some work I wanted him to do. I couldn't go myself and sent him down there that Sunday and some of the children went with him. The Sunday before he went down to see the renter, I went home with him, Mrs. Curtis, one of my neighbors, came and told me they were going to put the men out of the houses and Robert was down in the field, cutting some wood, him and my little brother, and she came and told me and I thought I had better let him know, he didn't know nothing about it and his family was there and I went down and told him and I went home with him. We caught the five o'clock bus and we come back the next Sunday on the nine o'clock bus. I went to Isabella with him. The days of April 22nd, 23rd and 24th, are days composing the time of the year when farmers are busy if they are going to make a crop. If my renter had been away from home all day around April 22nd and that night and all day Tuesday, April 23rd, and that night and came back to where he was making a crop

on April 24th, I would certainly have noticed that absence. I don't remember the dates but he was there all through the week, except on Saturday and Sunday.

Cross Examination by Mr. Ault.

I live in Cherokee County, North Carolina, about half way between Murphy and Copperhill. I s around fourteen miles from Copperhill, I imagine. Robert Lee Ballew is my first cousin, he came to the place to rent a crop from me the last of January or 1st of February. I don't mean the last day of January or the first day of February, I don't remember the exact date, but as I say I didn't count the time because I was paying no particular attention to it. I know if he had been gone on April 23rd, 22nd and 24th, I would have been able to notice it. He went home on Saturday evening and came back on Sunday evening and he was there at work for me. I am certain he was at my farm on those dates. He came there the last of January or first of February and stayed on until they took him into custody. I didn't have a written contract with him, and nothing by which I could refresh my memory and tell you what date he came there. The man that came there and arrested him was just a large, heavy-set fellow, I don't know his name, he was white, or looked to be—he was white on the outside. He came there between two and three o'clock, and I don't remember the date it was, it was on Tuesday, I know it was on Tuesday, because his wife had been up there and she went home that day, I remember it because she went home and I went to the bus with her. The bus runs every day and she went on Tuesday. I

went there with her, I just remember that, because they come and got him. If they hadn't got him I wouldn't have remembered it, maybe. I have not talked to anyone about what I have testified here, haven't talked to a living human about what I was going to say as I know of.

(This witness was then excused.)

The witness, ROBERT C. HUNT, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Townsend.

My name is Robert C. Hunt. I am a lawyer associated in the defense of these cases. I was employed by M. C. Anderson and a man by the name of Brainard, who were both connected with the International Union of Mine, Mill & Smelter Workers.

I first began to represent Anderson some two or three weeks before this matter arose. At that time I was representing them in connection with the strike at Copperhill, Tennessee. Then when these men were arrested Anderson came, in company with a man by the name of Brainard, who was also a representative of this Union, came to my office and employed me, or I was already employed to represent them; he told me about this matter—about these men having been picked up, and I commenced working on it at that time shortly after they were arrested. Before I contacted my clients I made considerable effort to contact the men in custody who I considered to be my clients, before I was permitted to see them. I recall the occasion when Anderson himself was arrested and I

made an effort to communicate with him here in this building at the Marshal's office, in company with E. B. Baker. Baker got in the case the day Anderson was arrested. I employed him. I had authority to employ him and when this matter arose I explained to Mr. Brainard and Anderson that I had had very little experience in criminal law and didn't feel qualified to go ahead with it alone and I suggested they allow me to associate your firm, Mr. Baker and you in the case and they did so. I had mentioned to Mr. Brainard and Anderson both before the thing arose, before Anderson was arrested that I would probably want to associate someone with me. That was after the other men were arrested and when Anderson was taken into custody I decided I should associate your firm and I did at that time go and see Mr. Baker. I explained the situation to Mr. Baker and we came, as I recall it, immediately to the Federal Building where Anderson was being held. We came over here and went back to the Marshal's office and asked if we could see him. We learned that he was being questioned and interrogated, however, we didn't know where he was being held. We stayed around for a while and couldn't find out where he was. We asked if we could talk to him, that was the purpose of coming here to try to see him. I had an appointment with him in my office at 1:00 o'clock and I recall he was arrested at 12:30. I knew he was to come to my office but in the meantime he was arrested and naturally I wanted to see him and talk with him. I first got Mr. Baker and we came here to talk to him and asked if we could, he asked for me and was not permitted to see me. At the time we asked to see him

Coyle Ricketts was present and one or two other Marshals whom I don't recall the names of. Mr. O'Conner connected with the FBI was there, later Mr. Plaxico was there and possibly one or two others. I don't recall that O'Conner was present when we were refused the right to see our client. I do recall O'Connor coming in and out of the room that we were in and possibly Mr. Plaxico or some other agents of the FBI, and they concurred in the refusal to allow us to see him. As to the details as to who was there at some particular time I couldn't say but I know we were there and they were representatives of the Federal Bureau of Investigation there, Marshals there and we were there and we were not allowed to talk to Mr. Anderson. The next morning after we had made these efforts to see Anderson I came and saw him, you and Mr. Baker. While in the office of Baker and Townsend I am not very clear as to the phone calls, we were continuing efforts the next day to see our clients, continued that all through the next day and I went, in company with you, I think these men that were being held at Copperhill were brought to Chattanooga about the time Anderson was arrested and after they were brought here I, in company with you, went to the County jail and asked to see him and we were not allowed to see them. At that time they had been held in custody a number of days, some of them four or five days. Upon our failure to see a single one of the defendants at the county jail when we applied for that purpose, we drew up contracts of agreement for the wives, mothers and families of the defendants to sign and went to Copperhill and had them signed, giving us authority to see the men and we was

preparing to discuss the matter with the men and we wanted to bring habeas corpus proceedings in order that we might see them.

Cross Examination by Mr. Ault.

At the time I went to the County jail I was representing the defendants. I may have said I considered I represented them but I was employed to represent them on behalf of the Union by representatives of this Union, M. C. Anderson and Mr. Brainard. I have previously talked to some of them—I represented Marion Ellis in a state proceeding where they had him arrested and he was tried. I had talked with John McGhee and several of the other men. I don't think I talked with Ed Simonds, but I would say I talked to six or eight of them when I had dealings up there with the Union, and in the Ellis case. I had not talked to them about whether or not I would be employed in this case. I had been employed in this case at that time and never had talked to them about it. At the time I went to the County jail I considered I did represent the men. I had been employed by them to represent them. I considered I was representing them but had not talked to them about the case. I couldn't talk to them about the case, I couldn't get to talk to them until we were permitted to see them afterwards. I didn't know they would hire me, I had been employed by the Union to handle the whole situation and I was following out the terms of my employment to talk to these men about the matter. I thought my employment by the Union was to handle the whole situation and I thought in view of the circum-

stances I was entitled to interview these men about the matter. I went to Polk County to see the men's wives and get authority from them, because we wanted some authority to represent the men from the Union but had no authority from the men themselves.

(This witness was then excused.)

The witness, J. M. C. TOWNSEND, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

Q. You are J. M. C. Townsend? A. Yes, sir.

Q. Are you a practicing attorney? A. I am.

Q. Will you turn to the jury and detail what efforts you made to see these defendants? A. Mr. Hunt came to our office on the morning, came to see us about these men who were put in jail in Hamilton County, which I recall was on April 30th, that would be on the morning of May 1st, as I remember it. I could be mistaken, but he had already contacted Mr. Baker, my partner. Up to that time I had nothing to do with the case, I was not familiar with it, but on the morning of May 1st, he came in company with a man named Brainard and Mr. Reed Robinson, the President of the International Union at Denver, Colorado. These men, Mr. Brainard and Mr. Robinson, said they felt they had sufficient interest in these defendants to employ counsel on their behalf, and inasmuch as it was a physical impossibility for them to employ counsel in their own behalf, they made arrangements with our firm; they had already arranged with Mr. Hunt to represent the defendants. Pursuant to that representa-

tion Mr. Baker, in the presence of these men telephoned the jail, and pursuant to that he put in a call for Commissioner Anderson, following that he put in a call to Mr. J. B. Frazier, and following those telephone calls, all of them efforts on our part to contact our clients who were in jail and being denied the privilege of counsel, we went to the jail and Mr. Hunt and myself we said we represented these defendants who were in jail, and who were not in position to employ counsel in their own behalf, and stated that we had been employed as counsel by the President of the Union and other parties, other representatives of the International Union of Mine, Mill & Smelter Workers at Denver, Colorado, and we wanted to see the defendants we represented, as their attorneys, and we were advised at the jail that they were being held as Government prisoners with instructions that they be held incommunicado, and not permit them to see anyone. Upon that refusal we went to Copperhill and got authority from the wives and members of families of these defendants, all of the defendants, to represent them, because of habeas corpus petition so they might be taken out of jail and have the benefit of counsel, as assured to them under the constitution. The wives of the defendants in jail gave us that authority. We came back to Chattanooga at fairly a late hour, after dark, eight or nine o'clock, and the next morning when I got to the office I learned it would not be necessary to file the petition, because the rule had been relaxed so as to allow us to see our clients, one at a time only, and we proceeded to see them one at a time, and it required from then up until Saturday before they were tried on May 6th at the preliminary trial, to talk with all

our clients, since we were permitted to see only one at a time.

On Sunday before May 6th, which was May 5th, I went to the jail, knowing that under the rules of the jail that was a regular day for prisoners to have visitors, and there I found the wife of Wayne Henry in the office of the bookkeeper, and also found Mr. O'Conner, connected with the FBI, and I asked Mr. O'Conner and the jailor—I presented to Mr. O'Conner the wife of Wayne Henry and asked that she be permitted to visit her husband, which was refused there at the time. I think that is all I have to say.

Cross Examination by Mr. Badgett.

Mr. Hunt was the first person to contact our firm. Mr. Reed Robinson, the President of the Union, and a man named Brainard were at the office to see us about it. We were employed by the Union and have been paid by the International. At the time we were trying to see these men I had never seen them, no way for us to see them, and they had no way to employ counsel. I had not seen the men. The reason we went to see the men's wives was because we thought the question of authority to represent them might be raised and I was not certain what the court would say about whether the International had authority to employ counsel in their behalf or not, but we knew we had been employed by the International Union. I was not doubtful about the authority to represent them but doubtful about the legal authority to represent them in the absence of their wives or members of their families directing us to do so.

(This witness was then excused.)

The defendant, CLINT HUFFMAN, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Clint Huffman and I was originally one of the defendants in this case. I know M. C. Anderson. At no time along about the middle of April, April 12th, 13th or 14th, or at any time when I was at M. C. Anderson's office at Ducktown did I ever meet there one Freed Long. I never met him when he was coming out of the office or going into the office and I never did see him there.

Cross examination waived.

(This witness was then excused.)

The defendant, CLYDE HUFFMAN, being introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Baker.

My name is Clyde Huffman and I was originally one of the defendants in this case. At no time on or about the 12th, 13th or 14th of April, 1940, was I ever at M. C. Anderson's office in Ducktown and met a man named Freed Long. I never passed him on the way out of that office.

Cross examination waived.

(This witness was then excused.)

At this point the defendants rested.

Mr. Baker: For the benefit of the record at this time we want the record to show that we move the Court to exclude from consideration of the jury the confessions

of Earl Hubbard, Robert Ballew, David Queen, Felton Woodward, Ed Simonds and Robert Rhodes. That your Honor exclude those confessions from the consideration of the jury because obtained by duress, the hope and promise of rewards—that those confessions be excluded from the evidence.

The Court: Let the motion be overruled.

Mr. Baker: We except to the Court's ruling.

The witness, JAMES A. BAILEY, introduced on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is James A. Bailey; I live at 805 27th St., S. W., Birmingham, Alabama. Bessemer, Alabama, is about twelve miles from Birmingham and I live in Birmingham, although Bessemer is a suburb of Birmingham. There is a little community there named Powderly and I live about a mile from there, and another community named Ishkooda nearby. I have lived in that community about eighteen years and work for the Tennessee Coal, Iron & Railway Company, as a hoisting engineer. I know the defendant M. C. Anderson and have known him between 20 and 25 years. I think I know his general character and reputation in that community and will say it is bad and based on that reputation I wouldn't give him full faith and credit on his oath in this court.

Cross Examination by Mr. Baker.

I said I work at Ishkooda for the Tennessee Coal, Iron & Railway Company and have worked there twenty-two years as hoisting engineer. I am a member of the Union,

AFL Union, it used to be known as The Brotherhood of Captive Miners. It was not later a company union.

I was contacted by a Mr. Junetail, or something like that, with reference to coming to Chattanooga to testify in this case and he is an FBI Agent in Birmingham. He didn't come to see me, he called me on the telephone last Saturday two weeks ago. I do not know him. I do not know how he got my name. He contacted me by telephone and talked to me on the telephone. He just asked if I knew Mr. Anderson. I have not been around home in the last several years and have not been in his house since he married. I know where he lives and he lives in Sunnyside. I wouldn't know the names of the streets, but it is known as Sunnyside, or Rosemont. I have lived in that section and they don't have street numbers. I have not lived in that community for the last fifteen or twenty years, but live in Birmingham now, which is about a mile and a half away. The last time I saw M. C. Anderson was around the bath house at the mines not very long ago. The best of my information the International Union of Mine, Mill & Smelter Workers has had an organization at Ishkooda since 1934.

(This witness was then excused.)

The witness, JAMES R. CARSON, being introduced on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is James R. Carson; I live about midway between Birmingham and Bessemer, Alabama, and about a mile or mile and a half from Powderly and right at

one of the mines near Ishkooda. I am Mine Foreman at the Ishkooda mine, I have supervision over both shifts, around 250 men.

I have known M. C. Anderson twenty years or more, I know his people. I think I know his general reputation and character there in the community in which he lives and it is bad and from that general reputation and character he is not entitled to full faith and credit on his oath in this court.

Cross Examination by Mr. Baker.

I wouldn't say his character is bad because he belongs to the Union, I don't condemn any man for what he belongs to. Some gentleman in Birmingham called me to come here. I never saw this man in my life and he called me and asked me the same questions that I have been asked here. I do not know how he got my name and I do not know how he knew that I knew M. C. Anderson. When he called I was at the Division Commissary, the company store, he told me his name, but I can't tell you now what it was. I was called to the telephone by Mr. Edney, who is Division Deputy, in charge of the Deputy Sheriffs in that Division. He told me that a man wanted to talk to me on the telephone and he is employed by the Tennessee Coal, Iron & Railroad Company.

Re-Direct Examination by Mr. Badgett.

I am under subpoena to come up here and testify in this Court.

(This witness was then excused.)

The witness, HAMPTON FIELDS BAKER, being introduced on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Hampton Fields Baker and I live at Ishkooda, Alabama, about a mile and eight-tenths from Powderly, and about six miles from Birmingham. I am employed as hoisting engineer for the Tennessee Coal, Iron & Railroad Company. I have never worked with M. C. Anderson but I worked around him and know him. I know where he did live, but I don't know whether he lives there now or not. I have known him in that community for about twenty-five years and I think I know his general reputation and character in the community and it is bad and from that reputation and character he is not entitled to full faith and credit on his oath in the court.

Cross Examination by Mr. Baker.

I am hoisting engineer at Ishkooda with the Tennessee Coal, Iron & Railroad Company, and have worked for that company about eleven years. I worked there in May and June, 1934, and worked there in 1936, and have not lost any time at all other than a day or two, I worked on through the strike. A hoisting engineer is a maintenance man and works regularly seven days and nights per week. I did not belong to the Union and I cannot tell you who it was called me in reference to coming up here. He called me over the telephone and told me his name, but I don't remember it, he called me on the telephone at the Commissary at Ishkooda and I was called to the telephone by Mr. Sparks, a man there at the Commissary.

I don't know who this man that called me was by name, or how he got my name. I was already there at the commissary when he called, just standing around. Nobody had called me and told me to go to the Commissary and I didn't see Mr. Bailey or Mr. Carson, in the commissary while I was there. I imagine Mr. Edney was there, he stays around there a good deal. When I was talking over the telephone I didn't see him. He is a deputy sheriff for the company and I think he is the only deputy there is there.

Re-Direct Examination by Mr. Badgett.

I am under Federal subpoena to be here as a witness and I was here yesterday when the Solicitor General testified in this case and I know him.

(This witness was then excused.)

The witness, FRED EDNEY, being introduced on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Fred Edney and I live at Ishkooda Mines near Birmingham. I know M. C. Anderson and have known him five or six years, and I think I know his general reputation and character as to truthfulness and it is bad and based upon that character and reputation I wouldn't think he was entitled to full faith and credit on his oath in this court. I am under subpoena to be here as a witness.

Cross Examination by Mr. Baker.

I live at Ishkooda Mines, about eight miles from Birmingham and went to work there sometime in 1934, I

think it was on June 28th. I went to work for the Tennessee Company on the 26th of March, 1929, and the Police Department of Westfield on the 15th of March, 1934, and then went into the other department as special officer. I work part of the time at Ishkooda and part of the time at Winoka and I think I went to Ishkooda regularly on the 28th of June, 1934, and have been stationed there regularly ever since. When I went there on the 28th of June, 1934, there was a strike on; I didn't belong to the Union, and at that time I didn't go there in charge of guards for the Company. There was a few of us there at that time, I think when I went there they had four in the daytime and four at night. There is only one there now. We have a house rent man who carries a commission and a mine foreman who carries a commission. As far as deputies are concerned, I am the only one. At the time I went there there was eight. A man named Untriner called me on the telephone in reference to this case and I have a subpoena from the court. I didn't have a subpoena when I talked to him but after I talked to him I got a subpoena. He is an FBI man but I don't know him personally. I don't know how he got my name, I can't say. I might guess at it and might be wrong and might be right.

(This witness was then excused.)

The witness, J. L. McNABB, being introduced on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is J. L. McNabb and I live at Isabella, four miles Northeast of Copperhill, Tennessee, and have lived

there twenty-two years and have a family. I am foreman of lead burners and carpenters at the acid plant at Isabella. I have known Freed Long eighteen or twenty years and I know his general reputation and character in the community and it is good and from that character and reputation he is entitled to full faith and credit on his oath in this court.

Cross Examination by Mr. Baker.

I am foreman of lead burners and carpenters at the acid plant and I didn't come out on strike and I am not a member of the Union. Freed Long worked for me, he quit or something happened up there, I don't know why he left, I didn't fire him. He is supposed to live there in Isabella but I do not know where he has lived for the last few years. I know of his family. I do not know of him having more than one family, and it is not part of his reputation so far as I know that he has been prosecuted for bastardy. I never heard anybody say anything about that. In 1939 I believe he was working at the contact acid plant and I believe he was working there when the strike started and I think he went out on strike. I don't know what his reputation is where he lives now. He worked for me and I never caught him in a falsehood and he kept up his job as long as he was there with me and that is all I know about him.

(This witness was then excused.)

The witness, W. H. GRAHAM, being introduced on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is W. H. Graham and I live at Isabella and have lived there off and on all my life. I have known Freed Long for about twenty-five years in that community and I think I know his general character and reputation and it is good and based upon that reputation he is entitled to full faith and credit on his oath in court.

Cross Examination by Mr. Baker.

I am a deputy sheriff and started working as a deputy sheriff the 8th of October, 1939. There was a strike in progress there at the time I went to work as a deputy sheriff and I was stationed at Ducktown, under Sheriff Biggs, and my foreman was Frank Clayton. I was not living at Isabella where I was employed as a deputy sheriff. I was in Knoxville at that time. I went away from Isabella in 1919 but have been back there often since that time. I have a son there at Isabella and I would visit him and that is what I call my home, but I didn't live there all the time. I worked in Knoxville. I used to be a deputy sheriff a good while ago and I was tried and convicted of rape and sent to the penitentiary and served about eleven months.

(This witness was then excused.)

The witness, GROVER COLE, being introduced on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Grover Cole and I live at Isabella, Tennessee, and have lived there about thirty-two years. I have known Freed Long in that community about twenty-five years and know his general character and reputation and it is good and based on that character and reputation he is entitled to full faith and credit on his oath in this court.

Cross Examination by Mr. Baker.

I formerly belonged to the Union and came out on strike with them, but went back to work before the strike was over. I don't know where Freed Long lives now, but he used to live in Isabella or Stewartown, about two years ago. I don't know what he has been doing for the last two years. He worked for the Copper Company until a year or two ago. It is part of his reputation that he has been prosecuted for bastardy, I don't know that he has but I have heard rumors to that effect and have heard it talked about. I think he was charged with bastardy, but I don't know how it came out. I can't say whether he had trouble with more than one woman or not, I can't say whether the people say he had trouble with more than one or not. Probably has, but I don't know.

(This witness was then excused.)

The witness, BOB STYLES, being introduced on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Bob Styles, I live at Isabella, Tennessee, and have lived there for fifteen years and have known Freed Long for about fourteen years. His general character and reputation in that community is good and from that he is entitled to full faith and credit on his oath in this court.

Cross Examination by Mr. Baker.

I am employed as an electrician employed by the Tennessee Copper Company and have been working for them since about the time they bought the Ducktown Chemical & Iron Company out. I stayed off four weeks during the strike and then went back to work and the strike was settled something like a year after I went back to work. Freed Long lives in Stewartown and I live at Isabella, adjoining Stewartown. I have not seen very much of him for the last year. I have heard at various times that it was part of his reputation that he had been prosecuted for fooling with girls up there, I heard of one case. I have not heard that it was a fact he was prosecuted in three or four different cases, I only heard of one case. I never heard it talked that he broke in a store up there.

(This witness was then excused.)

The witness, FATE JOHNSON, being introduced on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

My name is Fate Johnson and I live at Isabella and have lived there forty-seven years. I have known Freed Long all his life and his general character and reputation there in the community is good and from that reputation he is entitled to full faith and credit on his oath in this court.

Cross Examination by Mr. Baker.

I have known him all his life and I don't think he worked in 1939, I saw him around Isabella and Ducktown that year. I live about a mile and a half from him. He has a wife and family and four or five children. I don't know how long he has been married, I remember when he was married, but don't remember the time. I don't know whether he was prosecuted for bastardy since he was married or not. I heard a little about it and I don't know, I suppose it is part of his reputation that he has, I have heard something about him being prosecuted for bastardy. I don't know whether he had as many as three families or not.

(This witness was then excused.)

The witness, J. A. ROCHE, being re-called by the Government, testified as follows:

Direct Examination by Mr. Badgett.

I questioned Ed Simonds on three different occasions. On the first occasion Mr. Mann and myself were present,

on April 25th in the afternoon. On the second occasion Mr. Plaxico and myself on the evening of the 25th and again on the evening of the 28th when Mr. Plaxico, Earl Hubbard, Felton Woodward and Mr. Mann was present and the last occasion is when Ed Simonds made his verbal confession. On that occasion I nor any other agent of the Federal Bureau of Investigation or anybody else in my presence called Ed Simonds a damn liar. I never called him that and anybody else I have just mentioned ever called him a damn liar with a son-of-a-bitch on the end of it. I never made a statement to Ed Simonds "we have the goods on you, you may as well tell us about it, we had it on you when we picked you up."

Mr. Plaxico, in my presence, never promised leniency to Ed Simonds or to any other of these defendants, or make any promise to them. On Sunday evening Ed Simonds, Felton Woodward and Earl Hubbard, all three of them made statements to us to the effect that they had been treated very fairly by the FBI Agents and they went into great length telling us what good treatment they had received and how much they appreciated it. Ed Simonds specifically asked about the requirements for getting into the FBI and said he wished he had more education so he himself could make application for a position with the FBI.

I nor Mr. Plaxico nor any other agent in my presence, never threatened Ed Simonds or any of the other defendants with a term of 35 years in the penitentiary if they didn't make a statement. I don't believe Agent Morgan ever questioned Felton Woodward, at least he never questioned him in my presence. Ed Simonds never asked

me for a lawyer or asked anybody in my presence for a lawyer and was not denied the right to see a lawyer. I didn't tell Ed Simonds that he had got awfully damn smart since he was put in jail and nothing similar to that was ever said by me or any other agent in my presence to Ed Simonds. I didn't point out the auger in the river to Ed Simonds, that is ridiculous, Ed Simonds pointed out the auger to me. He told me at that time an individual had dropped it off the trestle and I didn't know there was a trestle at that time, so I asked Ed Simonds if he would go and show me where it was and he said he would and the following day he took me out and we drove over to this trestle and we got out of the car and Ed pointed out where the auger should be, where they had dropped it on the way over on the night of the 31st of March.

I questioned Earl Hubbard, Agent Mann and myself questioned him on the 25th and Mr. Plaxico and I questioned him that night and then we asked him again on the 28th and at that time Mr. Plaxico, Ed Simonds, Bud Mann and myself were present, and he made a verbal confession. While we were questioning im I and no other agent in my presence or to my knowledge ever denied him the right to smoke a cigarette, in fact I gave him cigarettes myself and he smoked his own cigarettes, rolled them himself. I recall that specifically because I borrowed his tobacco and paper on one occasion and rolled them myself with his tobacco. Mr. Plaxico in my presence never knocked a cigarette out of his hand or tell him that smoking was not allowed. I didn't hear Agent Mann call him a damn liar, or any other agent, and I

didn't. I never heard Earl Hubbard ask for a lawyer and be denied the right to a lawyer. I was not present when Mr. Whitten questioned him. I didn't take Earl Hubbard's glasses off and no other agent did to my knowledge, he had them on at all times when I saw him.

I questioned Felton Woodward on the 25th in the afternoon and again or the evening of the 25th and the only other time was on the 28th. The first time I ever heard the name John M. Cash being used was on Sunday night April 28th and at that time the only people present were Mr. Plaxico, Mr. Mann, Earl Hubbard, Ed Simonds, Felton Woodward and myself. Agent Morgan was not there at that time, he was in Detroit, Michigan, he left early Sunday morning for Detroit. I know he left the Copper Basin and went to Detroit, Michigan. I can't say whether Agent Morgan ever questioned Felton Woodward. He may have but he didn't question him in my presence. I never heard Mr. Plaxico make a statement "the FBI convicted 98% of their suspects and you are gone if you don't plead guilty." I never heard such a statement in my presence and I never made it and no other agent to my knowledge made such a statement. Mr. Plaxico didn't threaten him with 35 years if he didn't sign a statement, and he didn't promise him he would take care of a State case he had pending if he would make a statement.

I questioned the defendant M. C. Anderson here in this building in my office and it was the same day the individual warrants were issued and he was in custody then. He was picked up as I recall about 1:30 in the

afternoon at the Key Hotel and brought over to the FBI office here in this building and warrants were issued that night about seven o'clock. Mr. Hunt found out where Mr. Anderson was, Mr. Anderson called Mr. Hunt from the office shortly after he was brought in. Mr. Anderson asked me for an attorney and I asked him who he wanted and gave him permission to use the telephone and he made several calls over the telephone, and called Mr. Hunt. I never called Mr. Anderson a damn liar or used any profanity in any way towards him, and didn't threaten him in any manner and he didn't give me a statement. I asked him specifically if he had seen Felton Woodward anywhere after we had the information from Felton Woodward, I was trying to connect some of the details of his statement and I asked Mr. Anderson where he had seen Felton Woodward and when last in Chattanooga and he specifically told me he had not seen him here since sometime in March, at which time they attended some kind of injunction suit here in this court and he told me he had never seen him here in April in Chattanooga.

Cross Examination by Mr. Baker.

I have testified two or three times already in this case. When I first entered the service of the Federal Bureau of Investigation I took an oath to uphold the Constitution of the United States and support it.

(This witness was then excused.)

The witness, H. E. PLAXICO, being re-called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

I was present for a short time when the defendant M. C. Anderson was talked to, Mr. Roche was also there. I didn't and Mr. Roche didn't in my presence, or to my knowledge, curse Mr. Anderson. I didn't, Mr. Roche didn't or anybody else in my presence, tell Anderson "damn you we have ways to make you talk." I never called Ed Simonds a damn liar or anything similar to that. I never told Ed Simonds that he had better plead guilty or he would get 35 years in the penitentirary and I never threatened him in any manner. I never told him that the FBI got 98% convictions and he had better talk, because we were going to get him anyway and I have never told a defendant that in my life. I didn't deny to Ed Simonds or to any other defendant the right to an attorney. I never told any of them we had the goods on them when we picked them up and they might as well talk and I didn't tell Ed Simonds that. I never promised Ed Simonds that if he would sign a statement I would see he got a small bond and I never promised him if he would sign a statement that I would use my influence with the court to help him get out on probation. I never told a defendant that in my life. Earl Hubbard had his glasses on when he was questioned. I never pulled his glasses off and no other agent of the FBI took them off in my presence, or to my knowledge. Earl Hubbard smoked cigarettes, rolled his own cigarettes, and I never

told him it was against the rules to smoke and he couldn't smoke and I never knocked a cigarette out of his hand and no one else knocked a cigarette out of his hand in my presence. I saw him smoke. I didn't tell Earl Hubbard "you don't need a lawyer, you are going to talk" or anything similar to that. I didn't tell Felton Woodward that the FBI convicted 98% and that he was gone if he didn't come down and plead guilty, or anything to that effect. I never told Felton Woodward that if he would sign a statement and plead guilty I would see that a state case he had was fixed up and I had no way of fixing a State case.

Cross Examination by Mr. Baker.

I talked to Earl Hubbard, on April 27th, which was Saturday, for a few minutes and it was around six o'clock in the evening and he was at the YMCA at that time. I took an oath to uphold and support the Constitution of the United States when I entered the service of the Federal Bureau of Investigation.

(This witness was then excused.)

The witness, N. H. McCABE, being re-called on behalf of the Government, testified as follows:

Direct Examination by Mr. Badgett.

Q. Mr. McCabe, did you question Martin Simonds? A. Yes, sir.

Q. When did you first see Mr. Simonds? A. On the 26th.

Q. Where did you see him? A. At his home.

Q. I want you to tell the circumstances of that? A. Agent Morgan and myself went to the home of Martin Simonds to interview him in connection with this case. We found him at his home and asked him if he would accompany us to Copperhill so we could talk to him, and he said that he would, that he had nothing to hide, and denied he had any information concerning the case or any knowledge of it.

Q. Was he arrested, Mr. McCabe? A. Oh, no, no, we didn't arrest him.

Q. What did he do, before he went with you did he show you the property there? A. Yes, he told us about his—how much land he owned out there, or had.

Q. Did he show you—say anything to you about one of the boys that was dead? A. He told us he had a boy who, I believe, was in the army at one time—he had come back and committed suicide or shot himself right there in the house.

Q. Mr. McCabe, where did you question him in Copperhill? A. At the YMCA.

Q. Who was present? A. Agent Morgan and myself started to question him, and Martin Simonds stated that he had nothing to hide and he had a diary—

Mr. Townsend: The Court please, I object to that—it was agreed it would not be referred to.

Mr. Badgett: He has a right to state what Martin said.

The Court: I think so.

Mr. Badgett: Tell about the diary.

A. He said he had a diary and that he had nothing to hide and he would be glad for us to see the diary.

Q. Did he let you see it? A. Yes, sir.

Q. Did he give you the diary? A. He didn't have it with him; he told Agent Morgan where it was in the house there, and gave Agent Morgan the combination to some sort of safe or vault.

Q. He gave Morgan the combination on it? A. Yes, either he wrote it out or he told it to Morgan and Morgan wrote it out and Morgan left and went over to get the diary.

Q. Did you, Mr. McCabe, ever pull Martin Simonds' ear or hair? A. No, never.

Q. Did you touch him in any way? A. No, sir.

Q. Did Agent Morgan ever do it? A. Not in my presence.

Q. I will ask you if you ever pulled out a prepared statement and pulled this man's ear—got hold of his ear and pulled him up to a table and said "here, sign this"? A. No indeed.

Q. Did you ever question John David Queen? A. Yes indeed.

Q. I will ask you if you ever told Queen this—it may sound ridiculous, but you have to answer it—

Mr. Townsend: I object to that remark.

The Court: Yes, sustained.

Q. Did you ever say this, have a statement and say "sign this quick, guess you are in a hurry to get home to your baby"? A. No.

Cross Examination by Mr. Baker.

X. Did Queen have a sick baby? A. I didn't understand.

X. I say, did Queen have a sick baby? A. I don't know, he never mentioned it to me.

X. Didn't mention it to you? A. No.

X. No conversation about it? A. No.

X. What time of day were you at Martin Simonds' house? A. It must have been about 2:00 or 3:00 o'clock in the afternoon.

X. Who went with you? A. Agent Morgan, and there was a deputy sheriff—I believe his name was Clyde Dale.

X. He drove you over there? A. Showed us where he lived.

X. Clyde Dale went in Martin Simonds' house and you and Morgan stayed in the car, didn't you? A. No, that is not true. I took my car, as I recall we had a little difficulty getting the car in there, and we all went up to the house and Martin was not there at the time—he was up in the orchard, and I believe one of the youngsters went up after him and he came back.

X. Who went up after him? A. I don't recall.

X. What happened when he came back—where did he come, to the house? A. He came back to the house, that is right.

X. Did he go inside the house? A. Yes, I believe he did.

X. Change clothes? A. I think he probably put on a coat or something, I am not clear.

X. I will ask you if Clyde Dale didn't draw his gun on him? A. No, not in my presence.

X. Well, you were right there all the time, weren't you? A. I didn't see any one draw any gun. We didn't

have any gun, or we didn't go out there to arrest him, we went out to interview him.

X. You went out to interview him? A. Yes, sir.

X. Why didn't you interview him then? A. Well, we were out there—he has a rather small place and numerous children around there, and his wife, and there wasn't any suitable place to interview him; we asked him if he would mind coming to Copperhill, he said "not at all."

X. You would not interview him there in the presence of his family? A. It was not that—it was not a very convenient place to interview him.

X. What was the matter with interviewing him in your car—you had it parked there? A. Well, we asked him if he would come over to Copperhill, and he didn't object, and that was a more suitable place to interview him than sitting in a car, and he had no objection.

X. You thought the YMCA building at Copperhill was a more suitable place to interview a man than at his home or in your car? A. It certainly was better than sitting in a car—you could sit down at a table and talk, and if there was any writing to be done you could write without being cramped up in a car.

X. You knew Martin Simonds lived in North Carolina, didn't you? A. I don't know that he lives in North Carolina, I understand he does.

X. Well, you know how you got out there, don't you, drove out a road didn't you? A. Yes.

X. It is a concrete road out to the State line, isn't it, then it is a black surface road for a— A. I recall we went out a hard surfaced road and then we turned

off, I believe to the right, and went on some dirt road—I couldn't swear what State he lives in.

X. Mr. McCabe, don't you know there is a sign six feet square at the State line? A. Yes, but we turned off that road and turned down to the right, and I don't know whether that road was in Georgia, North Carolina or Tennessee, it is all right there in a line there.

X. You didn't try to find out? A. It was immaterial to me what State he lived in.

X. You don't recall passing by a big sign that said, "North Carolina-Tennessee line"? A. I may have, I don't recall.

X. Don't recall that. Well now, if you just wanted to talk to Martin Simonds, after you interviewed him at the YMCA why didn't you turn him loose, you didn't have him charged with anything? A. I didn't have him charged with anything, that is right.

X. Well, you were taking him over there to interview him, after interviewing him why didn't you turn him loose? A. As far as we were concerned he was turned loose.

X. You took him to Copperhill and put him in the YMCA and turned him loose after you talked to him? A. Yes, we turned him loose.

X. You know what happened to him? A. After we got through talking with him it was about time to eat, as I recall it, and the rest of the boys were eating at the YMCA and Martin Simonds, after we finished, we told Martin Simonds that he could stay there or if he wanted to we would take him back to North Carolina.

He said that he had nothing to hide and he would just as soon stay right there.

X. He would just stay right there in the YMCA building? A. Yes.

X. He wanted to stay there? A. He said he had nothing to hide and he would just as soon stay there.

X. And you gentlemen were wanting to take him back home, and were very nice about it, and said, "we will take you back home, Martin," and he said, "no, I like this place here"—is that what you want this jury to believe? A. At the time we brought him over there—

X. Is that what you want this jury to believe? A. Let me explain, please.

X. All right, go ahead. A. At the time we brought him over there we told him he didn't have to go over there if he didn't want to, and he said he would just as soon go over there, and he had nothing to hide, and was not afraid of being questioned, or anything, so we brought him over there, and we brought him over there with the understanding if he wanted us to we would take him back again.

X. When did he finally get out of the YMCA building, do you know? A. I don't know.

X. You know the next time anybody heard of him he turned up at the Hamilton County jail on the 30th of April, don't you? A. I didn't see him in jail.

X. Well, you saw him off and on at the YMCA on the 27th, 28th, and 29th of April? A. I saw him where?

X. At the YMCA? A. I only talked to him on the 26th. That is the only time I interviewed him.

X. You did see him there in the building on the 26th, 27th, 28th and 29th? A. I may have, I don't recall.

X. You don't know whether he was there or not. And all the time he was there for those four days he was enjoying you gentlemen's hospitality, and you were so nice to him he didn't want to go home to his wife and family? A. (Witness did not answer.)

X. Did you take an oath to uphold and support the Constitution of the United States when you entered this service? A. Yes, sir.

Re-Direct Examination by Mr. Badgett.

RQ. Mr. McCabe, who went up in the orchard after Martin? A. I don't recall.

RQ. It was one of you officers? A. No.

Mr. Townsend: I object to that as leading.

Mr. Badgett. Well, was it one of you officers?

A. No, as I said, as I understand, it was one of the children went up and got him.

The Court: Let him answer.

Mr. Badgett: You were there all the time present when Mr. Dale was present?

A. I was.

RQ. Did Dale or anybody else ever pull a pistol on Martin Simonds? A. No indeed.

(This witness was then excused.)

The witness, E. M. HEVRON, being re-called on behalf of the Government, testified as follows:

Direct Examination by Mr. Badgett.

I talked to Martin Simonds on one occasion for about an hour and Mr. McCabe was present with me. Mr. Mc-

Cabe never told Martin Simonds to sit up and didn't pull his ear or hair, he didn't touch him and I didn't touch him. He didn't ask for an attorney and I didn't make a reply in response to his asking for an attorney "who do you want me to get, a New York lawyer," and called the lawyer's name. I never called Earl Hubbard a damn liar or curse him in any way and neyer cursed Felton Woodward or any of the other defendants and none of the other agents ever cursed any of them in my presence. I never made any promise to any of these defendants or hear any of the other agents make any promises in my presence.

Cross Examination by Mr. Baker.

I talked to Earl Hubbard on the 25th of April and that was the only time I talked to him. I talked to Martin Simonds on the 26th of April. When I talked to him he was in a small room off the lobby in the YMCA at Copperhill. There were no deputy sheriffs in there with him and he was not locked up in the room. I don't know whether he was free to leave or not. There were deputy sheriffs in the lobby of the building but the front door was not locked. I don't know whether the deputy sheriffs were guarding the building or not. I take it for granted they were there for some purpose, I don't know. I took an oath to uphold and support the Constitution of the United States when I entered the service of the FBI.

Re-Direct Examination by Mr. Badgett.

I also took an oath as an attorney in the State of Kentucky, and as an attorney at the Federal Bar.

(This witness was then excused.)

The witness, J. E. LUNSFORD, being re-called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

Q. Mr. Lunsford, did you ever question Robert Rhodes? A. Yes, sir.

Q. When? A. On April 29th.

Q. Did you ever call Robert Rhodes—did you ever tell him "you are a damn liar"? A. No, sir.

Q. Did you ever tell him you knew what he did and he might as well tell about it? A. No, sir.

Q. Did you ever call Robert Rhodes a damn liar fifteen or twenty times? A. No, sir.

Q. Did you ever look up from your typewriter while you were writing what he told you, and intersperse your typewriting with the explanation "you are a damn liar"? A. No, sir.

Q. Did you take his statement? A. Yes, sir.

Q. Did you ever tell Robert Rhodes if he would sign this, speaking of his statement, that you would take care of him? A. No, sir.

Q. Did you go up after Ballew? A. Yes, sir.

Q. What did you go for? A. Went up there to talk to him.

Q. Tell the Court and jury the circumstances surrounding that? A. We went over to a woman's house, Edna Carter, as well as I remember, where Robert Ballew was supposed to be staying. He was there and we asked him if he would go to Copperhill, we wanted to talk with him about the dynamiting case. He told me

before we left that he did not object to going. I told him he didn't have to go unless it was voluntary on his part and he said he had nothing to hide, had nothing to be afraid of and would be glad to cooperate in every way. He accompanied us to Copperhill where we talked to him.

Q. Did you deny him his right to get his coat? A. Absolutely not.

Q. Did you pull him out of the house? A. No, sir.

Q. How did he come out? A. He just walked out.

Q. Who was present with you when you went up there to interview him? A. Agent Whitten and a deputy sheriff named Clyde Dale.

Q. Did Clyde Dale arrest him? A. No, sir.

Q. Did either you or Mr. Whitten arrest him? A. No, sir.

Q. Did Mr. Whitten ever put handcuffs on him? A. No, sir.

Q. Did anybody? A. No, sir.

Q. Did Mr. Whitten, when you got to the State line, put handcuffs on him, or say, "now, damn you, you will talk"? A. No, sir.

Q. Where did you question Ballew? A. At the YMCA building.

Q. What did you do with him after you finished questioning him? A. We just left him there.

Q. Did you make this statement, you or Mr. Whitten or anybody else in your presence after you finished talking to him, "Here is your prisoner"? A. No, sir.

Q. Did you say that to one of the deputy sheriffs? A. No, sir.

Q. Did you ever tell Ballew "if you want to go home, sign this" speaking of a statement? A. No, sir.

Q. Where did Ballew make his statement? A. Here in the Federal building.

Q. Tell the Court and Jury the circumstances of that? A. The United States Marshal's office was requested to make Ballew available to us for an interview here in the Federal Building. He was brought down by someone to a little office on this floor where we talked with him, at the same time Ed Simonds was there. He talked with Ballew too, about their part in the dynamiting, and after they discussed the case between themselves Ballew gave us a statement. It was voluntary, he didn't have to give it, he just told us about it, and voluntarily signed it.

Q. I will ask you whether or not you let him read the statement? A. Yes, sir.

Q. Did you cover the statement up like this (indicating), with a yellow sheet of paper and just leave enough there for him to sign? A. No, sir; absolutely not.

Q. Did you tell him that this statement he signed was a release, that "we thought you wouldn't have anything to do with it, we brought you here to give you a release"? A. No, sir.

Q. Did you ever tell him that? A. No, sir.

Q. Did you ever tell him if he would sign a release, that he was signing a release, when he signed that statement? A. No, sir; he knew what he was signing.

Mr. Townsend: We object to that.

Mr. Badgett: Did he know what it was?

A. Absolutely; yes, sir.

Mr. Townsend: We object to that.

The Court: Yes.

Mr. Badgett: Did he read it, and was it read to him?

A. Yes, sir, it was read to him, and I think he read it.

Mr. Townsend: We object to what he thinks.

The Court: That is right.

Mr. Badgett: Did you or any other officer ever take a knife away from Ballew?

A. I didn't take any from him.

Cross Examination by Mr. Baker.

X. You say you didn't take a knife off of him? A. No, sir.

X. Who did take it off of him? A. I don't know.

X. Clyde Dale took his knife, didn't he? A. No, sir; not to my knowledge.

X. You were right there with him? A. I was there the whole time.

X. Don't you know that one of you three took his knife away from him when you got ready to bring him over there? A. I have a recollection something about a knife, I don't know who took it, or whether it was taken or not.

X. Somebody did search him? A. No, sir.

X. Who got a knife off of him? A. I didn't get any knife off of him.

X. You know it was taken away from him? A. He said he had a knife on him.

X. Did anybody ask him, any of the three of you; why would he voluntarily give the information he had

a knife on him? A. One of us probably asked him if he had a knife?

X. He had a right to have a knife? A. Yes, sir.

X. You didn't have him under arrest? A. No, sir.

X. You just wanted to interview him, was all, if that is the only thing you wanted, to interview him, why would you ask him if he had a knife? A. In lots of cases we have had agents killed when they would go to a place to talk to a man about a matter, he might have something on his mind that we didn't know anything about, and agents have been killed.

X. You read his mind, and you were afraid if you went in there and talked to him he might kill some of you, so you searched him and took his knife away from him? A. No, sir, I did not. He was not searched.

X. You say when you got to the State line, Mr. Whitten did not put any handcuffs on him? A. That is right, at any time.

X. You didn't put any on him at the State line? A. I don't know when we reached the State line.

X. You answered to Mr. Badgett that Mr. Whitten didn't put handcuffs on him when he crossed the State line? A. Didn't put handcuffs on him at any time.

X. You knew that was in North Carolina? A. No, sir.

X. You never saw that big sign on the side of the road? A. I didn't see any sign there.

X. If you wanted to interview this man Ballew, why didn't you interview him at his home, where he was staying? A. We thought we could interview him better in Copperhill.

X. At the YMCA, is that correct? A. (Witness does not answer.)

X. You thought you could interview him better at the YMCA in Copperhill? A. We could interview him better than we could out at the other place, yes, sir.

X. Why didn't you interview him in your car up there, you wouldn't have had any interference with it; you thought it would be better at the YMCA? A. Yes, sir.

X. Who would have interfered with you up there? A. It was raining pretty hard all that day.

X. It was raining? A. Yes, sir.

X. When you went up there Ballew was in a room with a nice fire, nobody in there except him? A. There were several people there.

X. They were not in the room with him? A. They were in there, yes, sir.

X. Now, after you got him to Copperhill, and got him over there to the YMCA, you talked to him, of course, didn't you? A. Yes, sir.

X. After you got him there and interviewed him, as you say, why didn't you turn him loose and let him go home? A. I did, as far as I was concerned.

X. Did you tell Edna Carter in his presence, when you left with him, you would bring him back home? A. My recollection is we would have taken him back home if he wanted to go.

X. He is another man who didn't want to go back home, he told you that he liked the hospitality at the YMCA and wanted to say there? A. He didn't seem to want to go back.

X. He wanted to stay there and spend his time in the YMCA? A. I didn't know what he wanted to do, he didn't ask to go back.

X. He was not under arrest? A. No, sir.

Mr. Badgett: We object to counsel making statements, he was asked "that is what he did," and we object to counsel testifying unless he is sworn.

The Court: I presume he means those to be questions.

Mr. Baker: Did you take an oath to support the Constitution of the United States when you entered the FBI service?

Mr. Frazier: That is immaterial whether he did or not.

The Court: The Court knows all of them have taken it, no use to ask that.

Mr. Baker: That is all right.

X. You took his knife away from him because you were afraid he might cut one of you? A. No, sir.

X. He was not under arrest? A. No, sir.

X. He could have left the YMCA if he wanted to? A. Yes, sir; he didn't have to come if he didn't want to.

X. He didn't have to come, and he could have gone back if he wanted to? A. Yes, sir; he didn't have to leave in the first place.

X. He could have gone out of the YMCA, you said he could have left? A. I suppose he could. I came away from there.

X. There were eight or ten FBI men around there? A. No, sir.

X. And twenty-five or thirty deputy sheriffs around there? A. No, sir.

X. No deputy sheriffs around? A. Yes, sir; there were.

X. Out in front of the building, guarding the building, were they not? A. I don't know anything about the deputy sheriffs' duties, or how many were there.

(This witness was then excused.)

The witness, C. A. WHITTEN, being re-called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Badgett.

Q. Did you question Felton Woodward? A. Yes, sir—No, Huffman is the one I questioned.

Q. You didn't question Felton Woodward? A. No, sir.

Q. When did you question Hubbard? A. The first time on the evening of the 26th and the second time on the 30th.

Q. While you were questioning him did Earl Hubbard smoke? A. I think he smoked cigarettes more or less consistently.

Q. Do you know what kind? A. I have an impression they were home made cigarettes, he made them himself, I am not sure.

Q. Did you ever knock a cigarette out of his hand? A. No, sir.

Q. Did you ever tell him no smoking was allowed? A. No, sir; I smoked myself all the time.

Q. Did you ever tell Earl Hubbard if he would make a statement you would let him go home to his wife? A. No, sir.

Q. Did you make this statement after he made his statement, "Now, you have made a statement you can go home and see your wife"? A. No, sir.

Q. Did you tell Earl Hubbard if he would talk and sign this statement you would give him a good meal and a drink of water? A. No, sir.

Q. Did you question Robert Rhodes? A. Yes, sir.

Q. How far were you sitting from him when you questioned him? A. I think I was sitting around the table there.

Q. Did you place Robert Rhodes immediately in front of you to question him? A. I think I was sitting off to his side, the best I remember. I couldn't be definite about that.

Q. You didn't sit right in his face and question him? A. No, sir.

Q. Did you ever call Robert Rhodes a damn liar, or anything similar to that? A. I never called anybody, any of them that.

Q. Did you ever call any defendant that in your life? A. I wouldn't say in my life, but I do not as a general rule.

Q. You didn't call any of these defendants that? A. No, sir.

Q. Did you ever tell Rhodes if he would sign that statement you would take care of him? A. No, sir.

Q. Did you ever tell him you would cut his bond down to $1,000? A. No, sir; I couldn't make any such promise.

Q. Did you ever threaten him with any term of years, if he didn't sign it? A. No, sir; I have worked long enough to know that I have no choice or authority or jurisdiction at all when it comes to a sentence, I have nothing to do with that.

Q. How long have you been with the FBI? A. Going on fourteen years.

Q. I want you to tell just how it happened that you first saw Ballew? A. Well, we were trying to locate him, we heard he had something to do with this matter, and we made two trips trying to locate him, we went all around, probably in North Carolina, Tennessee and Georgia. I didn't know when were in one state or another, and we went by a man's house named Walter Bell and he gave us approximately this boy's relatives, a Mrs. Carter, and a day or so later we went there looking for him.

Q. Who was present? A. Clyde Dale, a deputy sheriff, Mr. Lunsford and myself.

Q. Tell what happened? A. It was raining that day, we had quite a time finding this woman's home. We finally located her home and Dale and myself stayed out in the car while Mr. Lunsford went in and asked this man to come out and talk to us. When he came out, at our request, on his own free will and acquiescence, he agreed to accompany us to Copperhill where we could talk to him and take our time. He said he would be glad

to cooperate in any way since he knew nothing at all about the matter at that time.

Q. What did he tell you, or you tell him about making the trip? A. We told him he didn't have to go, but on his own free will he accompanied us. If we had gone there to arrest him we would have covered the house all the way around, two of us would not have stayed in the car.

Q. You would have covered the back door and all the way around? A. Yes, sir; as officers do.

Q. Did you ever put handcuffs on him? A. We didn't have any that I know of. We never went out to make an arrest, and we didn't carry any handcuffs.

Q. Did you ever deny to Ballew the right to change his clothing? A. No, sir. I was not in the house when he came out. At the time he came out to the car he appeared to be willing to go, nothing said about his clothing.

Q. Did you take his knife away from him? A. I didn't know anything about his knife. I think he pulled out a knife in the back of the car. I might have asked him for it. I think he gave me a knife. I have Ballew confused with Ben Cross. He got mad with Mr. Lunsford and pulled out a knife, and I told him to give me that knife, he turned it over to me. That is the only knife I definitely remember. I do have a faint recollection that it is possible that Ballew gave me a knife, I don't remember distinctly, but it is possible. If I got a knife from him he gave it to me. I didn't search him or take it away from him. I might have asked him for it after he pulled it out.

Q. After you finished talking to Ballew, did you turn around to the deputy sheriff and say, "here is your prisoner"? A. No, sir; I never told them that at any time, I never referred to him as a prisoner.

Q. Did you tell Ballew if he wanted to go home he had better sign that statement? A. No, si , no statement signed at that time.

Q. Were you present when the statement was signed? A. The statement I took was taken here in Chattanooga.

Q. You were present then? A. Yes, sir.

Q. Tell the Court and jury the circumstances of that statement, how he signed it, and what happened? A. We talked to Ballew, according to the best of my memory, he was made available by the United States Marshal's office, at that time Ed Simonds was present, and there was some question about dates, and between the two they straightened the dates out themselves.

Q. That was in the Marshal's office here? A. Yes, sir. When he first came in, before Ed Simonds came in —I wouldn't be sure whether or not Ed Simonds came in with him, I don't think so, but I think he came in a few minutes later; when he first came in he said to get your paper and typewriter or words to that effect.

Q. Ballew said that? A. Yes, sir.

Q. I will ask you specifically— A. We had not talked over four or five minutes before he said that, I think it was immediately after he came into the room.

Q. Ed Simonds was there? A. Apparently Ed Simonds had talked to him before.

Mr. Townsend: We object to that.

The Court: Objection sustained.

Mr. Badgett: I will ask you if Robert Ballew signed a statement, when he signed it, whether or not you held a yellow sheet of paper over the statement to hide it, and asked him to sign it?

A. I don't remember having a yellow sheet at all.

Q. Do you remember that you had a paper over it? A. No, sir.

Q. The statement was read to him? A. Yes, sir; and he read it.

Q. Did the statement contain what he had told you men? A. That and nothing else.

Q. Did you ever tell Ballew yourself—first, did Mr. Lunsford pull Ballew out of the house when you went to talk to him? A. I think he followed Mr. Lunsford out of the door, the best I remember.

Q. Did you ever tell Ballew yourself that you were not after him, that Anderson, "is the man we want"? A. No, sir.

Q. Was any such statement made in your presence? A. Not that I know of, not that I recall.

Q. Did you ever tell Ballew, yourself, "we have found out you don't know anything, sign this paper and we will turn you loose"? A. No, sir. The only other time I talked to him was at the jail when we went to see Gordon Parr, and Ballew volunteered to go and get Parr to talk, he left me to try to get him to tell the truth.

Mr. Townsend: We object to that last part as being a conclusion.

The Court: Yes.

The Witness: That is what he said he would do, try to get him to tell the truth.

The Court: I think that might be competent, what he said.

Cross Examination by Mr. Baker.

X. You didn't have a warrant for Ballew when you went after him? A. No, sir, we didn't intend to arrest him.

X. You had no intention of arresting him? A. No, sir.

X. You had no charges against him? A. No, sir.

X. You merely went there for the purpose of interviewing him? A. We suspected that he had information or was connected with this offense.

X. Why didn't you interview him over there where he was living? A. It was raining, chilly and uncomfortable and we didn't want to talk to him around the family, because past experience has shown that such interviews are not successful one way or the other.

X. It has shown such interviews are not successful? A. Not from a law enforcement point of view particularly.

X. Your usual procedure is to never interview a man where witnesses would hear what you say to him? A. Unless it is a defendant.

X. Or another officer? A. Yes, sir.

X. The reason you didn't interview him there was there were people there whom you didn't want to hear what you told him? A. Well, the house was full of

children and women folk and they generally come around and divert a person's attention you are talking to, and our past experience is that it is not best to interview them under those circumstances, but where you can have quiet and without interruption.

X. You told him when you came there you merely wanted to interview him? A. I don't think we used words of that nature. We indicated we thought he knew something about this and would like to talk to him at some place where we could take our time and he said he would be glad to cooperate with us.

X. He was not under arrest, but you took his knife away from him? A. I have a faint recollection that he pulled out a knife in the back seat of the car for some reason, maybe somebody wanted to cut some tobacco or something, a pretty, long knife I think.

X. Did you take it away from him? A. One knife was a long one, I don't remember whether it was this knife or not.

X. You took it away from him? A. I probably asked him for it, I didn't take it away from him.

X. He gave it to you? A. If there was a knife he gave it to me. Let it go into the record that there was a knife.

X. He was not under arrest? A. No, sir.

X. He had a perfect right to keep his knife, didn't he? A. He had a knife, it was a pretty bad looking knife, according to my memory.

X. He had the right to keep it; he was not charged with anything? A. That is right.

X. Why did you take his knife away from him? A. I didn't take it away from him, I asked him for it and he gave it to me.

X. Why did you ask him for it? A. Sometimes people have unusual temperament, get excited and make trouble.

X. Were you afraid of him? A. I might have been, if I took the knife, if I asked him for it.

X. That is the only explanation you can give as to why you took the man's knife? A. (No answer.)

X. Ballew was not excited was he? A. I think he was. That was all the more reason we wanted to talk to him.

X. Didn't he say he was agreeable and was willing to go along? A. I say he was excited, or looked like he was guilty, the way he answered the questions.

Mr. Townsend: We object to that.

The Court: Yes.

A. His answers to our questions indicated that he had something on his mind that he was not willing to unload at the time.

X. You thought a suitable place to question him would be at the YMCA in Copperhill? A. Yes. I thought so; where we could sit down at a table and take our time and talk it over like anybody would talk over a business matter.

X. What did you do with him after you got through questioning him at the YMCA? A. I didn't do anything with him. The last I saw of him he was sitting there.

X. Why didn't you take him back home? A. I didn't turn him over to anybody. I lost interest in him then.

X. Well, why didn't you take him back home? A. He indicated he would rather stay there. I think some one mentioned the fact the Sheriff would probably want to talk to him, he had indicated that.

X. Ballew indicated that he wanted to stay there in the YMCA? A. I believe he did, according to my best memory.

X. How did he indicate it; what did he say? A. I don't remember what he said. I don't remember what was the last that he said.

X. You do know he indicated that he wanted to stay there? A. Apparently so. We told him when he wanted to go back home we would take him, and he indicated that he would like to talk to the sheriff if he wanted him.

X. You knew you were in North Carolina when you went after him? A. No, sir, I didn't.

X. You didn't know there was a big sign there on the side of the road? A. I didn't much care. We didn't go to arrest him. I didn't see any sign, and I didn't know whether we were in Tennessee, North Carolina or Georgia.

X. And you didn't care? A. It didn't make any difference under the circumstances.

X. When did you talk to Earl Hubbard last? A. On the 30th of April, I believe.

X. Did you talk to him on the 27th of April? A. It was on the 26th I believe.

X. You are one of the oldest men in the service? A. I might be considered about one of the oldest. Some have been in longer than I have.

X. You have been in 14 years? A. Going on 14 years, yes, sir.

Re-Direct Examination by Mr. Badgett.

RQ. Did you ever take Earl Hubbard's glasses off him while you were talking to him? A. No, sir.

RQ. Do you know whether he wore them or not? A. Yes, sir; according to my memory he did.

(This witness was then excused.)

The witness, R. L. MORGAN, being re-called on behalf of the Government, testified as follows:

Direct Examination by Mr. Badgett.

I questioned Felton Woodward on April 27th. I never called him a damn liar or a damn lying son-of-a-bitch. The first time I ever heard the name of John M. Cash was here at this trial, I was not in this case very long. The first I heard the name of John M. Cash was I think the first day I was here at this term of court, this trial here now. I first went into the Copper Basin on the morning of the 26th and left there the morning of the 28th, which was on Sunday. At that time Felton Woodward had not made any statement to me or to anybody else to my knowledge. I went to Detroit, Michigan, and didn't come back until the morning of this trial. I didn't tell Felton Woodward "the FBI has made an investigation of every place within a radius of 400 to 500 miles of Copperhill to determine who had bought cash sales of dynamite and fuse and blasting caps and we know that you would have to make a cash sale if you bought any, have to pay cash, and we have determined there was one cash sale in Bessemer, Alabama, by a man named John

M. Cash, and you are him." I never had a conversation about that with Felton Woodward and the first I knew about that was when I came here to this trial on January 13th. I have not even read Felton Woodward's statement yet.

Cross Examination by Mr. Baker.

The Federal Bureau of Investigation has offices in most all the large cities of the country, and they have an office in Birmingham.

(This witness was then excused.)

The witness, C. A. WHITTEN, being further re-called on behalf of the Government, testified as follows:

Direct Examination by Mr. Badgett.

The first time I heard about the name of John M. Cash was when I was talking to Mr. Phelps of the Powder Company at Bessemer. I was requested to talk to him by the Knoxville office. I think Mr. Plaxico called on the phone, either myself or someone in the office and that was when I went to the plant and discovered that someone had bought dynamite under the name of John M. Cash. I don't remember the date when I got that information. I went out there to try to find out if anyone from Copperhill had purchased dynamite out there and during that interview with Mr. Phelps I was told a man named John M. Cash had purchased dynamite and asked under what circumstances and details of it and he gave them to me. That was after the investigation had been completed in the Copper Basin, and was at the request of the Knoxville office and after I was through

with my assignment at Copperhill. I left the Copper Basin on the morning of May 1st and left Chattanooga on the afternoon of May 2nd for Birmingham and received this call from the Knoxville office after I returned to Birmingham and after these defendants had been brought to Chattanooga and put in jail.

(This witness was then excused.)

The witness, R. T. MANN, being re-called on behalf of the Government, testified as follows:

Direct Examination by Mr. Badgett.

I talked to Felton Woodward during this investigation and took his signed statement and at that time Mr. McCabe and Mr. Hevron were present. During the course of the investigation I didn't and none of the other agents in my presence ever called Felton Woodward a damn liar. I do not use profane language. I didn't and to my knowledge none of the other agents ever called him a damn son-of-a-bitch. The first time I learned about John M. Cash was during the time I took the statement from Woodward and that was on Monday the 29th and Felton Woodward mentioned it himself. I didn't and neither of the other agents told Felton Woodward anything about John M. Cash, no one could have known about it, it was impossible for us to know it. Nobody present told us about it. We were just there taking the statement that he was giving and putting down his statement as he told it to us. I never called Ed Simonds a damn liar or a damn lying son-of-a-bitch and Ed Simonds was never denied a lawyer. I didn't curse Earl Hubbard. I didn't tell David Queen "sign this right quick because you are

in a hurry to get back to your wife and sick baby." He made his statement in the presence of McCabe, Hevron and myself and there was no promise made to him to get him to make the statement and it is in his own words. I never threatened Felton Woodward with 35 years if he didn't make a statement, and never made that statement to any of the other defendants, and I didn't tell Felton Woodward to sign this statement, there is not a damn thing in it that will hurt you.

(This witness was then excused.)

This was all the evidence introduced on the trial of this case.

Mr. Baker: We would like to have the jury excluded again.

The Court: Gentlemen: I will have to let you go out.

(The Jury then retired from the court room.)

Mr. Baker: First, I want to move the Court to exclude from the consideration of the jury the alleged confessions of all the defendants making confessions, to-wit: Earl Hubbard, Felton Woodward, Ed Simonds, David Queen, Robert Lee Rhodes and Robert Lee Ballew—Because the confessions were obtained by duress and hope of reward.

The Court: Let the motion be overruled.

Mr. Baker: We note an exception.

Mr. Baker: I want the record to show the motion made separately for each defendant.

The Court: Let the record so show, and show the same ruling as to each defendant.

Mr. Baker: And the same exception as to each.

Mr. Baker: We want to move the court to direct the jury first to return a verdict of not guilty as to all the defendants, because there is no proof of a conspiracy. The *corpus delicti* hasn't been shown and there is no proof connecting these defendants with it, if there was a conspiracy. That motion is as to each of the defendants.

The Court: Let that motion be overruled—as to each defendant—at this particular time on this motion.

Mr. Baker: An exception is noted as to each defendant.

Mr. Baker: Now, taking the defendants separately, if the Court please.

We move the Court to direct a verdict of not guilty, or direct the jury to return a verdict of not guilty as to Rans Smith.

The only proof in the record as to Rans Smith is by the witness Freed Long who testified Rans Smith was in Anderson's office in Ducktown on or about April 14th when there was some discussion about dynamiting. Present with him was John McGhee and Anderson.

Freed Long doesn't testify, if your Honor please, that Rans Smith said anything there or that he was in the attitude of agreeing with whatever was done. On the contrary, he said Rans didn't say anything.

Before Rans Smith could be guilty it would be necessary for him to acquiesce in it. He might have been present where dynamiting was discussed but unless he participated and aided and assisted he would not be a conspirator.

The Court: I believe that is a matter for the Jury. Overruled.

Mr. Baker: Note an exception.

Mr. Baker: Now as to the defendant Theodore Woodward. The indictment in this case, if your Honor please, charges Felton Woodward, alias John M. Cash—and he is described as Felton Woodward, alias John M. Cash all through the indictment and all the overt acts charged to Felton Woodward are charged to Felton Woodward, alias John M. Cash.

Among them are included the alleged purchase of this powder.

The Court: Gentlemen: I re-read during recess the testimony of Phelps and Parsons, the men at the plant. I gather from their testimony that they both mean to say there was one man there. Parsons said he came into the office and while he was in the office he thought Phelps gave him a copy of the sales slip so he could go to the magazine and get the powder and it looks as though from the testimony of both of them that there was only one man in the office at that time.

Mr. Ault: The motion is to Felton Woodward.

The Court: No, Theodore.

Mr. Baker: I said Theodore.

The Court: The court understood him to say Theodore. As stated the indictment says all the way through, Felton Woodward, alias John M. Cash.

Mr. Ault: We think, your Honor, that there is not sufficient proof in the record for Theodore Woodward to go to the jury.

The Court: That is what the Court thinks. Direct a verdict as to Theodore Woodward.

Mr. Baker: As to the defendant, Marion Ellis.

He is in the same situation now as he was when I made a motion at the end of the Government's proof.

It was testified by the witness, Freed Long, that he had Anderson's car on one occasion and picked up Freed Long and took him to Anderson's office, but there is no proof as to the witness' purpose in taking him there or that he took him there for the purpose of discussing a conspiracy or dynamiting. The proof shows he didn't go in with him and had nothing to do with the meeting there.

The proof also shows by deputy sheriffs that on another occasion he was riding in an automobile in which was a brace and bit.

The Court: I think as to him—while I appreciate what you say—conspiracy is also shown and proven by various circumstances, one of which is association and other matters. I think that is a matter for the jury to determine. Overruled.

Mr. Baker: Note an exception.

Mr. Baker: We wish to make the same motion for Wayne Henry, Meggs Collins and Martin Simonds.

It is true it was stated they were present at a meeting but there is no proof that they took part in it, or agreed to do any unlawful act.

The Court: I am of the same opinion about them and think that should be determined by the jury. Overruled as to those three, and each of them.

Mr. Baker: Note an exception as to each defendant.

After argument of counsel, the Court then charged the jury as follows:

Gentlemen of the Jury: The indictment, gentlemen of the jury, as it stands is against, or charges the defendants, M. C. Anderson, John Ed Simonds, Felton Moore Woodward, Earl Hubbard, John David Queen, Robert Lee Rhodes, Robert Lee Ballew, John E. McGhee, Marion Luther Ellis, Joel Martin Simonds, Thomas Wayne Henry, Meggs Collins and William Rans Smith, with the crime of conspiracy to commit an offense against the United States, to-wit: to destroy property belonging to an agency of the United States.

Other details of the charge will be hereinafter explained to you.

To the indictment each of the defendants and all of them have entered a plea of not guilty, which makes the issues for your determination.

Each of the defendants, gentlemen, are presumed to be innocent and of good character and these presumptions stand as witnesses in their behalf until overcome by competent and credible proof.

Before the Government can convict there must be three propositions appear to you and that from the proof and beyond a reasonable doubt.

First, the venue, that is that the offense occurred in the jurisdiction of this Court, that is, in the Southern Division of the Eastern District of Tennessee, and Polk County is within that division and district.

Second, the *corpus delicti*, that is the body of the crime. In this case, that is to say that a conspiracy has

been entered into. The body of the crime is the conspiracy itself and the conspiracy must be within the venue.

Third, that the accused, some one or more of them are guilty as charged in the indictment.

Now, this indictment is based upon a law of the United States, which is codified in the United States Code Annotated at Section 88, Title 18, which reads as follows, so far as the definition of the offense is concerned.

> "If two or more persons conspire either to commit an offense against the United States or to injure the United States in any manner or for any purpose, and one or more of such parties shall do any act to effect the object of the conspiracy, such parties shall be punished according to the provisions of the statute."

The offense charged in the indictment that the conspiracy was to commit is found in the statutes of the United States as codified at Title 18 of the United States Code Annotated, a sufficient portion of which will be read to cover the offense herein under consideration.

> "Whoever shall take and carry away or take for his use or for the use of another, with intent to steal or purloin or shall wilfully injure or commit any depredation against any property of the United States or any branch or department thereof or any corporation of which the United States of America is a stockholder, shall be guilty of a certain offense and shall be punished in a certain manner."

Of course the offense being the destruction of the property of the United States, belonging to the United States, through a corporate entity in which the United States is a stockholder.

Now, you will notice that the distinct offense charged is a conspiracy to violate a law against the United States and it becomes necessary and my duty to explain to you what a conspiracy is relative to this case. Sufficient for this case to say that the simple definition of a conspiracy is an agreement or combination of two or more persons by some concerted action to accomplish some criminal act which is made a violation of the laws of the United States.

I think you readily get the idea of a conspiracy, it is simply an agreement between two or more persons, so far as this case is concerned, to violate a law which is prohibited by the laws of the United States, and in this case, of course, it is a conspiracy or agreement between two or more persons to destroy government property. That is the gist of the case.

Of course you would understand that such an agreement might be made in words or acts. Any proof of facts or circumstances that convinces that the meeting of the minds on agreement to accomplish the unlawful purpose is sufficient. That, gentlemen, is a matter of common sense. All agreements are not made by words, but either by words, actions or acquiescence in the agreement, in any manner that indicates that there is a meeting of the minds for the accomplishment of the unlawful purpose amounts to a conspiracy, whether it be by acts or words or acquiescence or any circumstances that show the meeting of the minds in any agreement to accomplish the unlawful purpose.

That agreement does not have to be all at the same time. Any person or persons who may come in on an

agreement already made and by some words or acts show they participated in the conspiracy, they are conspirators as much as if they had been in the conspiracy at the beginning.

Conspiracy does not have to be at the same time, that is all of it, but may be by words and other acts. One man may come in after its incipiency by his words or conduct—going back to the other proposition if at any time during the course of the conspiracy any person agrees to it by his conduct or his words, he becomes a conspirator to and is responsible for the acts of all as though he had been in it at its incipiency.

When there is proof that a conspiracy exists between certain persons, then the act of any one or more of the persons therein becomes the act of all who are in the conspiracy. Also, anything said by a conspirator while the conspiracy is effective is said on behalf of and binding upon all co-conspirators. But any act done or any words said after a conspiracy is over or has been flustrated as to the person doing the act or saying the words, then such act or words are not binding upon anyone else except the person who did the act or said the words. Unless it be that others implicated heard statements concerning the conspiracy and acquiesced therein or did not deny them. As to such persons the statements would be proof as against them all. As long as a conspiracy is operative and in effect the act of one is the act of all and there might be four or five in a conspiracy and only one do an overt act and his act becomes that of all of such of them. The idea being when two or more men meet for an unlawful purpose and agree to it, each is acting for the

other people in his conduct and his words, but if it appears that the conspiracy is ended, or has been flustrated as to any persons concerned therein, as heretofore explained, no words spoken by that person or act of his is binding on the others, because as far as he is concerned the conspiracy is terminated.

Another proposition is that there must be some overt act proven to have been done as a result of the conspiracy. The statute itself provides that there must be some overt act done, in compliance with the conspiracy. That act does not have to within itself be an offense but if it is an overt act, that is some physical conduct done as a furtherance of the conspiracy, the conspiracy being to do an unlawful act, that amounts to an overt act in this case as in any other case. In this case there is a charge of a number of overt acts, and the doing of those overt acts by any one or more of the conspirators in this case or any case, is the act of all concerned therein. Also, the proof of an overt act, after there has been a showing that there is an existing conspiracy to do the act, becomes proof to consider in corroboration of the making of the conspiracy itself. That is if it is shown there was a conspiracy, a *prima facie* showing of a conspiracy and then the showing of an overt act, some physical act by one of the conspirators then the overt act can be considered in proof as corroborative of the original conspiracy. In this case it is not denied but what a certain transmission tower, or towers, some of steel and some of wood, were destroyed by dynamite in the spring of 1940. The point being to determine, so far as the overt act is concerned, is whether it was these defendants, some one or more

of them, who did the dynamiting of some one or more of the transmission towers.

It is also not denied in this case but what the towers were the property of the TVA and the destruction of the towers was an offense against the United States.

This brings us back to the proposition of whether or not there is proof of a conspiracy by and between these defendants of some one or more of the defendants, and whether or not as a result of said conspiracy some one or more of the defendants participated in the dynamiting of one or more of said transmission towers. And all of these elements must be shown by the proof and beyond a reasonable doubt before there can be a conviction.

In determining whether or not there is proof of a conspiracy and of an overt act on the part of the defendants or any of them, you are directed to look to all the facts, circumstances, and reasonable inferences in the proof and to do this as to each one of the defendants.

You notice I state the proof must be beyond a reasonable doubt and that proof, or that character of proof must be as to every element of the offense.

By reasonable doubt is not meant every captious doubt that may come up in the mind, but is an honest doubt engendered by an honest investigation of the proof and such a doubt as reason entertains and sanctions.

It has been said as a reasonable proposition that after a juror has carefully, and conscientiously made a consideration of all the proof and still finds his mind in a hesitating condition that he has such doubts as would justify an acquittal.

On the other hand absolute certainty is not required, like a mathematical certainty, like two and two makes four, and the law does not require proof to that extent, but it does require proof to a moral certainty, and that character of proof is required as to every element necessary to constitute the offense.

Before I undertake to give you the contentions made by the Government and by the defendants, I will call your attention to certain propositions relative to how you will consider certain parts of the proof. There has been allowed for your consideration certain statements, confessions, or admissions alleged to have been made by some of the defendants. It is primarily for the Court to determine whether or not such statements are admissible for your consideration but it is wholly for you to determine how much weight or credit you will give to these statements. In doing this I instruct you that before you can consider the confessions of the defendants, or any of them, you must first find that they were freely and voluntarily made, without fear or compulsion, or hope of reward. In determining this matter you will take into consideration all the facts and circumstances in evidence before you bearing on this subject; that is the way and manner in which such confession or admission was obtained. It is not necessary that the defendants or any of them or any one of them should have been warned that what he said would be used against him, but it is, if so warned that would be a circumstance admissible to the idea of voluntary confession, but not conclusive. It is sufficient if the confession was voluntarily made, though the defendants or any of them as to this particular confession or admis-

sion were not warned or advised that he or they had the right to remain silent. Not to have had the aid of counsel or that the confessions were made to an officer while in custody, or drawn out by cross questioning put to the defendant or defendants, or that the defendant was questioned more than once during the night or for long periods of time would not in themselves render the confessions or admissions involuntary. But if by repeated questioning over long periods of time and during the night, or threats, or promises or hope of reward held out to the defendant or defendants, their will and mind was so impaired and enslayed that the statements introduced by the Government are not their free and voluntary act then you will entirely disregard such confessions or admissions. In passing on this question you will consider the age, experience, education, station in life and physical condition of the defendants; whether they had friends, relatives or counsel present; whether the questioning was carried on in an unreasonable manner and at unusual hours; whether or not they or any of them had been given drugs; whether they had sleep or food, whether or not they were kept in a private building or abused or cursed and forced to do other acts against their will.

The whole idea of the voluntary confession is that is to say, whether or not it is voluntary, whether or not such force, promises or deceit was worked upon the man who gave the confession as would make it involuntary. That is, was the act his free act and deed. It is, is it to the extent that he was caused to make a confession which was not his free act and deed, if it is then it becomes involuntary and then that confession has no weight, but on

the other hand if it is the result of questioning or any means along that line and yet you believe it was his free act, then it does become proof on the man who made it. If it was voluntary it is binding, if involuntary, it isn't binding.

If you conclude from the proof that the confessions or admissions were the free and voluntary act of the defendant or defendants, then you will give them such weight as you think they are entitled to in your consideration of this case. If you conclude that the confessions or admissions were not the free or voluntary confessions or admissions of the defendants or that they were given in consideration of leniency or hope of reward then you will entirely disregard such confessions and not consider them at all in your deliberations.

In passing on the competency of the confessions in the manner above set out you will consider each confession separately.

And, gentlemen, to the same effect you may consider the alleged pleas of guilty of five of the defendants made at the commitment hearing. That is determine whether or not they were free and voluntary or made under compulsion or hope of reward so as not to be the free act of the person or persons who made the pleas. If you find the confession was voluntary and he entered a plea of guilty on the commitment trial, then it would be proof against the person who made it, but should you find that the confession or admission was involuntary, then it would not be proof against him.

Any proof as to the failure of permitting any defendant by the sheriff, to employ an attorney or to make bail

or to see friends or family or unlawful arrest or authority to arrest is admitted for your consideration only on the question of whether or not the alleged confessions and pleas of guilty were free and voluntary. That is the reason that character of proof is admitted for your consideration for you to say whether the confessions and pleas of guilty were free and voluntary.

Also, on this question I charge you:

When you consider whether the pleas and alleged confessions were free and voluntary—an officer has a right and it becomes the duty of the officer to use all reasonable means to elicit the truth from the person suspected of crime, but not to the extent of using some oppressive methods and means as will overreach the person suspected with crime whereby his statement is not voluntary.

I charge you, gentlemen, that a confession by itself is not sufficient to convict for the reason that proof is required of the *corpus delicti*. You will recall that I told you the *corpus delicti*, the body of the crime, in this case, is a conspiracy, and there must be corroborating proof of same. Understand the proof does not have to amount to the strength of another witness but any substantial proof that tends to show the conspiracy, including the *corpus delicti*, is sufficient.

It is in the proof, evidence of a labor disturbance going on at the time of the alleged dynamiting of the towers and men were out on strike. This proof has nothing to do with the case, except in this particular. We are

not concerned as to the merits or demerits as to the labor trouble between former employees of the Copper Company and the Copper Company and these defendants, and that is admitted in proof for two reasons:

First, from the Government's standpoint, as showing a motive why the defendants would enter into a conspiracy to dynamite the towers; and,

Second, from the defendants' standpoint of showing a reason for high pressure methods of obtaining confessions and pleas and a reason why others might have dynamited the towers and laid the blame on them.

In this instance you may consider the labor difficulties as shown by the proof but not otherwise, as we have not that matter under consideration, except as it reflects on the issues here, whether or not these defendants are guilty of a conspiracy to dynamite towers.

With these general ideas in your mind as to the law of the case as affects the substantive case and certain parts of the proof, I will call your attention as briefly as possible to the contentions made by the Government and the contentions made by the defendants.

First I call your attention, gentlemen, to the fact that the case has been argued at length by counsel for the Government and the defendants and they have presented to you detailed contentions made by each side, so it will not be necessary to go into particular detail but there being so many defendants I will give you a brief summation of the proof, as you are the sole judges of the proof.

The general theory of the Government is that there was labor trouble between the Union and its members and

the Copper Company in the Copper Basin in Polk County and that these defendants were members of the union and that there was a strike on; that the feeling was high and members of the Union, not necessarily the Union organization itself, but certain members of the Union conceived the idea whereby they would cut off the production of the Copper Company and thereby win out in the strike. The Government insists by this scheme they, or certain classes of them, sought to cut off the electricity coming into the plant and thus necessarily reduce production and there were two lines coming in, the Parksville line and the Blue Ridge and that furnished them with electric power and lights and that it was necessary to cut off both ends so if one failed the other could furnish the load, and they conceived the idea and laid plans whereby this would be done and as a matter of fact dynamited both ends on April 1, 1940, and again dynamited both ends on April 14, 1940, and again to the same effect, both lines April 24, 1940; that this was the property of the TVA, a United States Corporation.

That there was a meeting of some of the defendants in the office of M. C. Anderson, who the Government states is a leader, their representative of the National Organization, whose locals were there in the Copper Basin and to which locals these defendants and others were members and that they met in the office of Anderson at Ducktown on April 13, 1940, on one occasion and met there again, and discussed about this method and means of tying up the production of the Copper Company and got the impression that it could be done by dynamiting towers and stopping the flow of electricity in the plant.

The Government insists that this statement he made on these two occasions and other occasions as shown, as indicated by facts and circumstances in the proof as to at least some of the defendants, and in furtherance of it there was sent a defendant to Bessemer, Alabama, to secure dynamite and fuse and that the overt acts was the securing of the dynamite and fuse and blowing up of the towers in furtherance of the conspiracy made by and between these defendants.

The Government insists that certain of the defendants made confessions that implicated themselves in the conspiracy and consummation of it and certain of them also plead guilty before the Commissioner at the commitment hearing and thus the Government insists that these confessions and pleas were voluntary, without any pressure being put on them, or any coercion and that all the defendants are guilty.

If you should believe the Government theory to be true from the proof, beyond a reasonable doubt, it would be your duty to convict the defendants.

The defendants say, however, generally, that this isn't true.

They say that they were on a strike at that time and that the Copper Company used drastic and high pressure methods by which to win the strike on its side, whereby they had the Sheriff's office with them in the fight and the Sheriff's office, through them, had employed a large number of deputies and large number of guards, employed by the Copper Company, and paid by the Copper Company and that very high pressure and deceitful methods were

used by the Company against these defendants and others in an effort to end the strike. They say the Union was active there, but it was a peaceful activity of the Union and these defendants as members thereof were there to see about the distribution of food and medicine and picketing and matters of that kind, all being peaceful and legal activities. The defendants say they never determined the destruction of any property at any time and never entered into any conspiracy to dynamite any of the power lines and that this high pressure, deceitful method was used to obtain confessions and pleas of guilty of some of them and that they finally decided that was the best way out of it, through representations made to them by the FBI agents and the Sheriff. Each and all say the Government has not presented sufficient proof to show them guilty of a conspiracy.

They say it is just as reasonable to suppose the Company, through some of its agents had the towers dynamited in order to have the Government send in their agents and lay the blame on the strikers, as it was to think that they did it.

They say from all of this there is not enough proof to convict them under the proof and beyond a reasonable doubt and that as a matter of fact they are not guilty.

If you conclude from the proof that the theory of the defendants is true or from a consideration of the entire proof in the case there still exists in your mind a reasonable doubt as to whether it is true or not, it would be your duty to return a verdict of not guilty.

Now, taking up each individually, and I charge you that you have to pass on the case as to each individually

and determine whether or not each is guilty or innocent and taking them up in the order in which they appear in the indictment.

First, the Government insists as to M. C. Anderson, that he was a leader among these defendants and the other Union men in the Copper Basin; that he, necessarily, being the National Organizer of the Union and came in with authority and that he did direct and head the conspiracy. They say he was in his office on April 13, 1940, when plans were discussed to dynamite the towers to reduce the production of the Copper Company. They insist that he was in a meeting at Isabella on April 18, 1940, when the same talk was had, and whereby he made certain assignments for certain ones to do certain things relative to the dynamiting of the towers. That he associated with the other defendants and was in Chattanooga at a time when Woodward was here and Woodward was on his way then for the dynamite and the reasonable inference, so the Government insists, is that Anderson knew about that and was having it done and from these and other circumstances perhaps not developed the Government says Anderson is implicated in the conspiracy to dynamite the property, and in fact was the leader.

If you believe the Government's theory from the proof, beyond a reasonable doubt, you will convict Anderson.

Anderson said, however, this is not true. He says he was an official of the Union, and assisted with the locals here. He said the Local Unions there each had set up offices but his regular duties was to see about the spending of the money sent in by the national organiza-

tion for food and medicine and supplies for those who were out on strike and their families and assist in the picketing and the like. He said the strike matters there were handled by the local unions themselves. He says he did associate with the defendants but says it was all in the course of his legitimate business and at no time did he discuss or hear discussed in any meeting the dynamiting of the towers or anything about destruction of any property by anybody. That the meetings were all legitimate and peaceful and for the purpose of taking care of the business of carrying on the strike in a legitimate and proper way and thus he says he is not guilty and that they are undertaking to frame him because he happened to be an official and that the Copper Company and agents of the Copper Company were trying to frame him as a leader of the men, but as a matter of fact he was not concerned in any of the dynamiting or in any conspiracy, and he says he is not guilty.

If you believe his theory in the case to be true or if from a consideration of the theory and the whole case it raises a reasonable doubt in your mind as to his guilt, you will acquit him.

Now, John Ed Simonds. The Government insists that he made a confession whereby he admitted carrying certain supplies, such as dynamite, etc., for the purpose of dynamiting and admitted participating in the dynamiting. Also that from time to time he consulted with others about the dynamiting and implicated Felton Woodward and Earl Hubbard as having participated with him in the plans for and in fact in some of the dynamiting. Also

that he entered a plea of guilty before the committing trial. That he was in the meeting at Isabella on April 18, 1940, when the dynamiting was planned and that an auger was found in his car. The Government insists from this and his association with the others and perhaps other facts and circumstances, he is shown to be guilty beyond a reasonable doubt. The Government says that he made this voluntary confession and also entered a plea of guilty before the commissioner, and if you believe this theory to be established by the proof beyond a reasonable doubt, it would be your duty to convict him.

He says, however, this isn't true. He says he did make this statement or confession and did enter a plea of guilty but that he did this under their high pressure and deceitful methods, that he made the written confession under such pressure and methods and that the same influence was still bearing down on him when he entered the plea of guilty, thinking that was the best way out for him, but that as a matter of fact he had nothing to do with any of the dynamiting or procuring of it, but was overreached by the FBI agents and says he was framed in this way, and that all his statements were made through coercion and were not voluntary and as a matter of fact that he had nothing to do with the dynamiting and is not guilty.

If you believe his theory to be true, or if a consideration of and the whole case leaves a reasonable doubt in your mind you should turn him loose with a verdict of not guilty.

As to Felton Woodward.

The Government contends that this defendant made a voluntary confession showing his implication in the planning and in the dynamiting of the towers; also that he was the man acting for the other conspirators and made the trip to Bessemer, Alabama, and there secured a supply of dynamite, fuses and caps. That in this confession he told in great detail all about his participation in the plans and in some of the dynamiting. That he al implicated in his confessions Ed Simonds and Earl Hubbard who he said were present when the verbal confession was made and made no denial of same. That he was present at the meeting on April 18th, at Isabel and had just left at the time of the meeting in Anderson's office on April 13th. That he also entered a ple of guilty before the Commissioner. The Government insists that his confession and plea of guilty were both voluntary on his part, and that from all this, and perhaps other facts and circumstances, that Woodward is guilty.

If you believe the Government's theory to be true from the proof, and beyond a reasonable doubt, you will convict him.

Woodward says, however, this is not true, that he was very badly treated and forced by high pressure means and methods and deceitfulness to make a statement and to plead guilty and had nothing to do with the dynamiting or the plans for doing the same. That he did not go to Bessemer, Alabama, after the dynamite. That the Government has failed to prove any case against him,

except the confession which he says was forced from him. That he was imposed upon like the rest of the defendants were, because of his part in the strike and that he is not guilty.

If you believe his theory to be true, or if you have a reasonable doubt as to whether it is true or not you will turn him loose with a verdict of not guilty.

As to Earl Hubbard.

The Government insists as to this defendant that he made a full confession showing that he had attended meetings where the dynamiting was discussed; that he ssisted in placing of certain of the dynamite in the roper places for use in dynamiting the towers; that he ntered a plea of guilty before the commissioner and hat his confession and plea were both voluntary. They also insist that he was present at the meeting in Isabella on April 18, 1940, where dynamiting was planned. That in his confession he implicated both Felton Woodward and Ed Simonds, stating that they were present when he made his verbal confession. And from all of this the Government insists that these confessions and the other facts and circumstances show he is unquestionably guilty.

If you believe that theory to be true from the proof and beyond a reasonable doubt, you will convict him.

However, Hubbard says that isn't true.

He says for his defense that he was forced by deceitful threats and promises to make a confession and to enter a plea; that high handed methods were used on him and that as a matter of fact he was never in any meeting where it was discussed about dynamiting anything, or

planned to do any dynamiting and that he had no part in it, and that he is being framed because of his activities in the strike, and that as a matter of fact he is not guilty.

If you believe his theory to be true or a consideration of his theory and the whole case raises a reasonable doubt of his guilt, you will release him with a verdict of not guilty.

John David Queen.

The Government insists that he made a voluntary confession wherein he admitted helping secure supplies for dynamiting and helping in the dynamiting itself at two different times. That he also plead guilty before the commissioner. That his plea of guilty and confession was voluntary and that from this and his association with the other circumstances that he is guilty.

If you believe the Government's theory to be true and beyond a reasonable doubt, you will convict Queen.

Queen says as a matter of fact this isn't true. He says also that he was overreached and that he made an involuntary statement and plea, because of the deceitful and high handed methods used on him; that as a matter of fact he did not participate in any way in the dynamiting and along with the others is being framed in this case by reason of their being on a strike, and that these methods are being used against him on behalf of the Copper Company and those in sympathy with it, and that he had nothing to do with any dynamiting or the planning of same and is not guilty.

If you believe his theory to be true or a consideration of his theory with the whole case raises a reasonable doubt as to Queen's guilt, you will return a verdict of not guilty and release him.

Robert Lee Rhodes.

The Government insists he made a confession that he went with certain persons and assisted in getting supplies for the dynamiting and assisted in dynamiting of a tower; that plans were made for this before he participated in the act; that he entered a plea of guilty before the commissioner and that his acts were voluntary, and from his confessions and plea and his association with others that he is guilty.

If you believe the Government's theory to be true from the proof and beyond a reasonable doubt you will convict him.

Rhodes says, however, this isn't true. He insists his confession and plea was involuntary and brought about by high handed methods; that he was forced to confess and plead and that his acts were not voluntary; that as a matter of fact he did not participate in the dynamiting or any plans for the same and that he is being imposed on for the same reason as heretofore mentioned as to the others.

Thus, he says he is not guilty and if you believe his theory to be sustained by the proof, or if after a consideration of the theory and the whole case you have a reasonable doubt as to whether it is true or not, you should release him with a verdict of not guilty.

Robert Lee Ballew.

The Government insists that Ballew made a confession of his implication in the conspiracy and in the dynamiting; that he also associated with the others and that his confession was voluntary and from this and other facts and circumstances it is shown that he is guilty.

If you believe that theory to be true beyond a reasonable doubt, you should find him guilty.

On the other hand he insists that his confession was involuntary and brought about by high handed methods; that he was arrested in North Carolina and forcibly taken to Tennessee and forcibly caused later to make a statement; that as a matter of fact he did not have anything to do with planning the dynamiting and that he is not guilty.

If you believe that to be true, or have a reasonable doubt as to whether it is true or not, you should release him with a verdict of not guilty.

John E. McGhee.

The Government insists that this defendant was in M. C. Anderson's office April 13th, when plans for dynamiting were made and was also at the Odd Fellows Hall in Isabella on April 18th when plans were made to do the dynamiting; that he acquiesced in these plans and knew about them and from his association with the others and participation in these meetings that he is also guilty of conspiracy.

If you believe that to be true from all the proof beyond a reasonable doubt, you would convict him and this is true if it be shown that he participated in these meet-

ings and discussions and acquiesced in what was said and planned, regardless of whether he had anything to do with carrying out of the conspiracy or not.

McGhee contends and claims this is not true, that he did not attend certain meetings from time to time and did not participate in the discussion of any dynamiting; that he did attend meetings from time to time and may have been in Anderson's office but at no time was it discussed to do any dynamiting or to harm any property and that he did not participate in any plans or dynamiting and as a matter of fact he is not guilty.

If you believe his theory to be true, or if a consideration of it along with the whole case raises a reasonable doubt in your mind as to whether it is true or not, you will release him with a verdict of not guilty.

Marion Luther Ellis.

The Government insists as to Ellis that he was very close to Anderson and acted for him in many particulars, and drove his car a lot; that he went after Freed Long and brought him to Anderson's office for the meeting on April 13th; that a brace and bit was found in his car at an unusual hour at night and just before a dynamiting blast went off; that he had his wife and baby with him on this occasion, in Anderson's car, but that it was a ruse used by many who were taking part in this dynamiting, to have their wife along with them. That from this and other facts and circumstances it is shown that Ellis was in on the dynamiting and in on the plans to do the dynamiting and that he is guilty.

If you believe that theory to be true from the proof and beyond a reasonable doubt, he should be convicted.

Ellis says for defense that he did work around Anderson's office some and drove his car some, but that it was all on legitimate business; that he was out on the night that the officers stopped him when they said they found a brace and bit in the car, for the purpose of driving his baby around who had the colic; that if there was a brace and bit in the car he did not know it and did not participate in any plans for, or any dynamiting and that he is not guilty and his guilt has not been proven.

If you believe that theory to be true from the proof, or if you have a reasonable doubt as to his guilt from all the proof you should acquit him and return a verdict of not guilty.

Thomas Wayne Henry.

The Government insists he was at the meeting where the dynamiting was planned on April 18, 1940, at Isabella; that he participated in the plans and was shown to have associated with and been intimate with the other defendants or some of them and that from this and the other facts and circumstances it is shown that he was in on the plans for the dynamiting and is guilty of conspiracy.

If you believe that theory to be true that he knew of the plans for the dynamiting as charged, from the proof, beyond a reasonable doubt then you should find him guilty.

Henry says this isn't true; that he did attend a number of Union meetings but at no time was dynamiting

or destruction of property discussed and that he had nothing to do with any of it and is not guilty.

If you believe that theory to be true or a consideration of his theory together with the whole case leaves a reasonable doubt in your mind as to his guilt you should release him with a verdict of not guilty.

William Rans Smith.

The Government insists that he was at Anderson's office on April 13th, when the dynamiting was discussed and plans made; that close association is shown by him with certain of the other defendants. That from the fact that he was present at this meeting and his association and intimacy with the defendants, or some of them, that he was in on the plans for the dynamiting and participated therein and is guilty.

If you believe that theory from the proof and beyond a reasonable doubt, that he was present when the plans were discussed to do dynamiting and acquiesced therein you should convict him; but he says that isn't true. He says he may have attended some meetings and did associate with some of the defendants but it was all legitimate and at no time was it ever discussed as to the dynamiting or destroying of Government property; that he never discussed any destruction or acquiesced in the destruction of property or dynamiting and that he is not guilty.

If you believe from the proof that theory to be true, or a consideration of the theory raises a reasonable doubt in your mind, you should release him.

Meggs Collins.

The Government insists that Meggs Collins was at the meeting at Isabella on April 18th and participated and acquiesced in plans for the dynamiting; that he also admitted association with the defendants, or some of them, and that from this participation in the plans and association it is shown that he was in on the conspiracy and that he is guilty.

Should you believe from the proof beyond a reasonable doubt that Meggs Collins was present at the meeting when dynamiting was discussed and acquiesced therein, becoming a party thereto, you should convict him.

Collins says it isn't true, that he attended meetings but that they were all legitimate, and about the plans for taking care of the strikers and their families; that at no time was dynamiting or destruction of property discussed at any meeting, and that he did not participate in any plans or dynamiting, and was not guilty.

If you believe his theory to be true or a consideration of it raises a reasonable doubt in your mind, you should release Collins with a verdict of not guilty.

Now, gentlemen of the jury, there has been offered in proof in here by the Government some circumstantial evidence to make out the case as to part of the defendants, and in part as to all the defendants.

On the question of circumstantial evidence I charge you that before there can be a conviction on circumstantial evidence the circumstances must not only be consistent with the guilt of the party, but inconsistent with innocence and such as to exclude every reasonable hypothesis or explanation except that of guilt.

You gentlemen are the sole judges of the evidence and credibility of the weight to be given the witnesses on the stand. It is your duty if you can reconcile the proof so as to make all the witnesses speak the truth, but if you can't do this it is solely for you to say how much weight or credit you will give to the swearing of any particular witness.

In arriving at that, gentlemen, look to the manner and demeanor of the witness on the stand, to his means of knowing about the matters about which he testifies, whether he appears to be a strong character or a weak character, of good mentality or bad, and then look to the probability or improbability of the matters about which he testifies, and from all of these matters decide how much weight and credit you will give to the swearing of any particular witness.

There are several modes of impeaching a witness. One mode is to show by credible witnesses that they know the general character of the assailed witness and that it is bad and that they know the character of the assailed witness for truth and veracity and that it is bad and that they would not believe him on his oath.

Another method of impeaching a witness is to prove that he made contradictory statements in court and out of court about material matters. If he made contradictory statements in and out of court they must be shown to be about material maters.

Another method is to show discrepancies in the witness' statements by a rigid and close cross examination of material matters, but it must be of a material matter.

If a witness has been successfully impeached you need not consider his evidence at all. If he has been

impeached and is corroborated by other facts and circumstances you may consider his evidence.

The defendants testified in their own behalf and they are entitled to do that and you must consider their testimony like that of the other witnesses, remembering, however, that they are interested witnesses and should weigh their testimony in the light of their interest.

There are several defendants, gentlemen, and I ask you to return a verdict on each defendant, except if you find from the proof they are all guilty then report guilty as to all, or if you find from the proof all are not guilty you will so report. But if you find guilty as to some, report guilty as to some and not guilty as to the others and report in detail, guilty or not guilty as to each particular defendant.

In this case, gentlemen, as in all cases, it is not for the Court and Jury to be concerned about the personnel of the litigants, who they may be or where they come from. It is the duty of the jury to take the whole body of the evidence and make up what they conceive to be a true and fair verdict and I charge you, gentlemen, so to do and return such verdict as to each defendant as you think justice demands and truth dictates.

Are there any suggestions?

Mr. Baker: I believe in giving the theories of the various defendants, your Honor overlooked Joel Martin Simonds.

The Court: I believe I did.

It is insisted by the Government as to him that he was present at the Odd Fellows Hall at Isabella on the

18th of April, at which time dynamiting was discussed and further plans made for the dynamiting of these towers and that he was present and participated therein. That that was a conspiracy in itself, done in his presence and that he is guilty as a conspirator.

If you believe that theory to be true and beyond a reasonable doubt, that he was there at the time and acquiesced in plans to dynamite these towers, then he would be guilty.

He said that isn't true. He says he lives in North Carolina and that the officers came there and by force and without authority brought him back and held him in unlawful custody for some time and that as a matter of fact he did not participate in any meeting where dynamiting was discussed or plans laid. He said he worked there and associated some with the defendants and attended meetings but did not participate in any plans for dynamiting at any time. Thus he says he is not guilty.

If you believe his theory to be true from the proof or from a consideration of it and the whole case there arises in your mind a reasonable doubt of his guilt, he would be entitled to a verdict of not guilty.

I thank you for calling my attention to that.

United States District Court, Eastern District of Tennessee, Southern Division. United States of America vs. Mitchell Clifton Anderson et al. No. 8100.

Defendants' Request to Charge Number 1.

Defendants request the Court to charge the jury as follows:

The Court has allowed certain statements, confessions or admissions by some of the defendants to be admitted to you in evidence. If a confession or admission is made and there is no conflict in the evidence as to the manner of its procurement, then the question of its admissibility is a question of law for the court to pass on. If there is a conflict in the evidence as to whether the confession or admission was voluntarily made then the court submits it to the jury. The Court instructs you that before you can consider the confessions of the defendants or any of them, you must first find that they were freely and voluntarily made, without fear or compulsion, or hope of reward. In determining this matter you will take into consideration all the facts and circumstances in evidence before you bearing on this subject; that is the way and manner in which such confession or admission was obtained. It is not necessary that the defendants or any one of them should have been warned that what he said would be used against him. It is sufficient if the confession was voluntarily made, though the defendants or any one of them as to his particular confession or admission, were not warned or advised that he or they had the right to remain silent, not to have had the aid of counsel or that the confession was made to an officer while in custody, or drawn out by cross questioning put to the defendant or defendants, or that the defendant was questioned more than once or during the night or for long periods of time would not in themselves render the confessions or admissions involuntary. But if by repeated questioning over long periods of time and

during the night, or threats, or promises or hope of reward held out to the defendant or defendants, their will and mind was so impaired and enslaved that the statements introduced by the Government are not their free and voluntary act then you will entirely disregard such confessions or admissions. In passing on this question you will consider the age, experience, education, station in life and physical condition of the defendants; whether they had friends, relatives or counsel present; whether the questioning was carried on in an unreasonable manner and at unusual hours; whether or not they or any of them had been given drugs; whether they had sleep or food; whether or not they were kept in a private building or abused or cursed and forced to do other acts against their will.

If you conclude from the proof beyond a reasonable doubt that the confessions or admissions were the free and voluntary act of the defendant or defendants, then you will give them such weight as you think they are entitled to in your consideration of this case. If you conclude that the confessions or admissions were not the free or voluntary confessions or admissions of the defendants or that they were given in consideration of leniency or hope of reward then you will entirely disregard such confessions and not consider them at all in your deliberations.

In passing on the competency of the confessions in the manner above set out you will consider each confession separately.

I charge you further that confessions of any kind are treated with distrust and should be scanned with care. This is true because at the time a confession is usually made, the defendant is in custody and usually surrounded by officers who are seeking to obtain a confession from him.

E. B. Baker,
J. M. C. Townsend,
W. T. Thrasher,
J. A. Lipscomb,
R. C. Hunt,
Attorneys for the Defendants.

Declined except as included in main charge.

Leslie R. Darr,
United States District Judge.

United States District Court, Eastern District of Tennessee, Southern Division. United States of America vs. Mitchell Clifton Anderson et al. No. 8100.

Defendants' Request to Charge Number 2.

Defendants request the Court to charge the jury as follows:

The Court has allowed certain statements, confessions or admissions by some of the defendants to be admitted to you in evidence. If a confession or admission is made and there is no conflict in the evidence as to the manner of its procurement then the question of its admissibility is a question of law for the court to pass on. If there is a conflict in the evidence as to whether the confession or admission was voluntarily made then the

court submits it to the jury. I instruct you that before you can consider the confessions of the defendants or any of them, you must first find that they were freely and voluntarily made, without fear or compulsion, or hope of reward. In determining this matter you will take into consideration all the facts and circumstances in evidence before you bearing on this subject; that is the way and manner in which such confession or admission was obtained. It is not necessary that the defendants or any one of them should have been warned that what he said would be used against him. It is sufficient if the confession was voluntarily made, though the defendants or any one of them as to his particular confession or admission were not warned or advised that he or they had the right to remain silent. Not to have had the aid of counsel or that the confession was made to an officer while in custody, or drawn out by cross questioning put to the defendant or defendants, or that the defendant was questioned more than once or during the night or for long periods of time would not in themselves render the confessions or admissions involuntary. But if by repeated questioning over long periods of time and during the night, or threats, or promises or hope of reward held out to the defendant or defendants, their will and mind was so impaired and enslaved that the statements introduced by the Government are not their free and voluntary act then you will entirely disregard such confessions or admissions. In passing on this question you will consider the age, experience, education, station in life and physical condition of the defendants; whether they had friends, relatives or counsel present; whether the questioning was

carried on in an unreasonable manner and at unusual hours; whether or not they or any of them had been given drugs; whether they had sleep or food; whether or not they were kept in a private building or abused or cursed and forced to do other acts against their will.

If you conclude from the proof that the confessions or admissions were the free and voluntary act of the defendant or defendants, then you will give them such weight as you think they are entitled to in your consideration of this case. If you conclude that the confessions or admissions were not the free or voluntary confessions or admissions of the defendants or that they were given in consideration of leniency or hope of reward then you will entirely disregard such confessions and not consider them at all in your deliberations.

In passing on the competency of the confessions in the manner above set out you will consider each confession separately.

E. B. Baker,
J. M. C. Townsend,
J. A. Lipscomb,
W. T. Thrasher,
Robert Hunt,
Attorneys for the Defendants.

Declined except as included in main charge.

Leslie R. Darr,
United States District Judge.

United States District Court, Eastern District of Tennessee, Southern Division. United States of America vs. Mitchell Clifton Anderson et al. No. 8100.

Defendants' Request to Charge Number 3.

Defendants request the Court to charge the Jury as follows:

That a defendant cannot be convicted on an uncorroborated confession. By that is meant there must be independent proof outside of the confession to establish the *corpus delicti*, that is, the body of the crime. Applying the rule specifically to this case you gentlemen would not be authorized to convict the defendant on an uncorroborated confession unless the Government had first shown that there was a conspiracy and that these defendants had some connection with the conspiracy, outside of the confessions or admissions.

E. B. Baker,
J. M. C. Townsend,
W. T. Thrasher,
R. C. Hunt,
J. L. Lipscomb,
Attorneys for the Defendants.

Declined except as included in main charge.
Leslie R. Darr,
United States District Judge.

United States District Court, Eastern District of Tennessee, Southern Division. United States of America vs. Mitchell Clifton Anderson. No. 8100.

Defendants' Request to Charge Number 4.

Defendants request the Court to charge the jury as follows:

There has been introduced in evidence before you certain alleged confessions. I charge you gentlemen that the confessions are admissible in evidence only against the defendant or defendants making them unless some other defendant was present when the confession was made and either approved the same or failed to deny it. In that event the confession would be admissible in evidence against all defendants present when it was made and he failed to deny it. Otherwise it would not be admissible against any defendant other than the one making it.

E. B. Baker,
W. T. Thrasher,
J. A. Lipscomb,
R. C. Hunt,
J. M. C. Townsend,
Attorneys for the Defendants.

Declined except as included in main charge.
Leslie R. Darr,
United States District Judge.

United States District Court, Eastern District of Tennessee, Southern Division. United States of America vs. Mitchell Clifton Anderson et al. No. 8100.

Defendants' Request to Charge Number 5.

Defendants request the Court to charge the jury as follows:

Certain of these defendants, to-wit: Wm. Rans Smith, John E. McGhee, Meggs Collins, Wayne Henry, Joel Martin Simonds, are connected in this case only by the testimony of the witness Freed Long. I charge you

gentlemen if you have a reasonable doubt as to the truth or falsity of the testimony of Freed Long it would be your duty to acquit the above named defendants.

E. B. Baker,
J. M. C. Townsend,
W. T. Thrasher,
R. C. Hunt,
J. A. Lipscomb,
Attorneys for the Defendants.

Declined except as included in the original charge.
Leslie R. Darr,
United States District Judge.

Mr. Baker: I want to except to some parts of the charge.

I think your Honor charged the jury if a plea of guilty was freely and voluntarily made then it would be binding on the defendant making that plea.

The Court: That is true, but I mean binding as proof, not that it absolutely convicts him.

Mr. Baker: It would only be a circumstance in proof.

The Court: I wouldn't say that; I would say it is proof. It is not conclusive, but it is proof.

The requests, unless called to my attention will all be declined except as to the general charge.

Mr. Baker: I want to except to your Honor's failure to charge the Jury defendants' request No. 1, and that particular part of it wherein it is stated:

> "If you conclude from the proof beyond a reasonable doubt that the confessions or admissions were the free and voluntary acts of the defendants, then * * *"

I think the same rule of evidence governs as to that as of every essential element of the case.

The Court: Perhaps so. You may have the exception. I think it is included in the general charge.

Mr. Baker: I also want to except to your Honor's failure to charge the last paragraph of this request, wherein it is stated:

> "I charge you further that confessions of any kind are treated with distrust and should be scanned with care. This is true because at the time a confession is usually made, the defendant is in custody and usually surrounded by officers who are seeking to obtain a confession from him."

The Court: I think that is covered in the charge generally and so it will be overruled.

Mr. Baker: I note an exception.

I also except to your Honor's refusal to give in charge defendants' requests Nos. 2, 3, 4 and 5.

The Court: Overruled.

I note an exception.

Mr. Baker: After deliberation the Jury returned into open court the following verdicts:

The Court: Is the call waived?

Mr. Townsend: It is.

The Court: All right, gentlemen, have you agreed on a verdict?

The Foreman: We have.

The Court: How do you find?

The Foreman: Mitchell Clifton Anderson, guilty; John Ed Simonds, guilty; Felton Moore Woodward, guilty; Earl Hubbard, guilty; John David Queen, guilty; Robert Lee Rhodes, guilty; Robert Lee Ballew, guilty.

John E. McGhee, not guilty.

Marion Luther Ellis, guilty.

Joel Martin Simonds, not guilty.

Thomas Wayne Henry, not guilty.
Meggs Collins, not guilty.
William Rans Smith, not guilty.
The Court: Have you got a memorandum there?
The Foreman: Yes, sir.

The Court: Let me call them back to you, gentlemen, so there may be no mistake:.

Mitchell Clifton Anderson, guilty.
John Ed Simonds, guilty.
Felton Moore Woodward, guilty.
Earl Hubbard, guilty.
John David Queen, guilty.
Robert Lee Rhodes, guilty.
Robert Lee Ballew, guilty.
John E. McGhee, not guilty.
Marion Luther Ellis, guilty.
Joel Martin Simonds, not guilty.
Thomas Wayne Henry, not guilty.
Meggs Collins, not guilty.
William Rans Smith, not guilty.
The Court: And so say you all, gentlemen.
The Foreman: Yes, sir.
The Court: Do all agree the report is correct?
The Jury: Yes.
(The Jury was then excused.)

In the District Court of the United States, for the Southern Division of the Eastern District of Tennessee. United States of America vs. Mitchell Clifton Anderson et al. No. 8100.

It Is Hereby Stipulated and Agreed by and between the attorneys for the respective parties hereto, that the foregoing bill of exceptions is correct in each particular, that with the exhibits, all of which are to be submitted

to the Circuit Court of Appeals on the argument by appropriate stipulation and order, it contains all the evidence in this cause, and that it may be duly signed, settled and allowed by the Honorable Leslie R. Darr, United States District Judge, who presided at the trial of this cause.

J. B. Frazier, Jr.,
United States District Attorney,

E. B. Baker,
J. M. C. Townsend,
W. T. Thrasher,
Robert C. Hunt,
J. A. Lipscomb,
Attorneys for Defendants, Appellants.

Dated .....

In the District Court of the United States, for the Southern Division of the Eastern District of Tennessee. United States of America vs. Mitchell Clifton Anderson et al. No. 8100.

Order.

This is to certify that the foregoing Bill of Exceptions rendered by the Defendants-Appellant is correct in every particular, that with the exhibits all of which are to be submitted to the Circuit Court of Appeals on the argument by appropriate stipulation and order, it contains all the evidence in this cause, and the said exhibits are hereby made part of this Bill of Exceptions, and it is hereby settled, allowed and made a part of the record in this cause.

Leslie R. Darr,
United States District Judge.

Dated March 25, 1941.

Clerk's Certificate.

I, Lee A. Beeler, Clerk of the United States District Court, within and for the Eastern District of Tennessee, Southern Division, do hereby certify that the foregoing writing, typewriting and printing, consisting of 124 pages of court records and 740 pages of bill of exceptions constitutes a full, correct and complete copy of all of the records called for in the designation of record on appeal, the originals of which remain on file and of record in my office at Chattanooga, Tennessee, in the matter of The United States of America, vs. Mitchell Clifton Anderson et al., No. 8100 on the Criminal Rule dockets of said Court and that the original exhibits sent up with this record are the original exhibits filed and used in the trial of said cause.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the said Court at Chattanooga, Tennessee, this the 26th day of March A. D. 1941.

Lee A. Beeler,
Clerk,
By Geo. E. Gresham,
Deputy Clerk.

(Seal)

PROCEEDINGS IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

(November 10, 1941—Before: SIMONS, HAMILTON and MARTIN, JJ.)

This cause is argued by E. B. Baker for Appellants and by J. B. Frazier, Jr., for Appellee and is submitted to the court.

JUDGMENT

(Entered December 4, 1941)

Appeal from the District Court of the United States for the Eastern District of Tennessee.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

OPINION

(Filed December 4, 1941)

Before SIMONS, HAMILTON and MARTIN, Circuit Judges.

HAMILTON, Circuit Judge. Appellants, Mitchell Clifton Anderson, John Edward Simonds, Earl Hubbard, Felton Moore Woodward, Marion Luther Ellis, Robert Lee Ballew, John David Queen and Robert Lee Rhodes, were convicted for a violation of 18 U. S. C. A., Section 88, by conspiring to commit an offense against the United States. They were charged with conspiring to violate 18 U. S. C. A., Section 82, as amended which makes it an offense to wilfully injure, or commit any depredation against any property of the United States or any branch or department thereof, or any corporation in which the United States is a stockholder. All of appellants, except Anderson and Ellis, received sentences of two years to serve and fines of $1,000.00. Anderson received two years and a fine of $5,000.00. Ellis received fifteen months and costs.

Appellants assign five errors for reversal, one of which has been abandoned, the four remaining being:

(1) That the court erred in refusing to direct the jury to return a verdict of not guilty as to each of the appellants at the conclusion of the evidence. This assignment subdivides as follows:

(a) That there is no evidence that either appellant Anderson or Ellis was a party to the conspiracy alleged in the indictment;

(b) That, excluding the uncorroborated confessions or admissions of appellants Simonds, Woodward, Hubbard, Rhodes, Ballew and Queen, there is no evidence against any one of them;

(2) That the confessions and statements of appellants Simonds, Woodward, Hubbard, Ballew and Queen were incompetent evidence even if corroborated, because such confessions and statements were obtained under duress, threats and by intimidation, and through the hope and promise of rewards;

(3) That the court erred in not permitting certain questions to be asked a government witness on cross-examination;

(4) That the court erred in refusing to instruct the jury as requested by appellants.

The extra-judicial confessions of appellants Simonds, Woodward, Hubbard, Ballew and Queen, standing alone as to each of them, show the corpus delicti and their identity with the offense; also the scienter. In disposing of the first error, the question as to appellants Simonds, Woodward, Hubbard, Ballew and Queen is whether their confessions are corroborated by substantial independent evidence of the corpus delicti. As to appellants Anderson and Ellis, the question is whether there is substantial evidence of their participation in the conspiracy or in any of the overt acts charged in the indictment.

The jury having found appellants guilty, we must accept that view of the evidence which is most favorable to the government. *Zottarelli* v. *United States*, 20 F. (2d) 795 (C. C. A. 6).

The Tennessee Valley Authority Corporation owned two power transmission lines carrying electricity to what is commonly called the "Copper Basin," in Polk County, Tennessee, both of which lines served the Tennessee Copper Company. The rupture of one of the lines would not disrupt service but the failure of both would cause operations to cease in the plant of the Tennessee Copper Company.

On July 14, 1939, a strike was called at the mines of the Tennessee Copper Company at Copperhill, Tennessee, by the International Union of Mine, Mill and Smelter Workers, and the plant closed, but it was reopened on August 28th. The strike continued with various acts of violence, although many of the strikers went back to work. Appellants Simonds, Hubbard, Woodward, Ellis, Ballew, Queen and Rhodes, were members of the union and employed by the Tennessee Copper Company and all remained on strike and in the picket line. Appellant Anderson was national representative and organizer for the union and in charge of the strike.

At 12:04 a. m. on April 1, 1940, a transmission line owned by the Tennessee Valley Authority was dynamited, at which time the power on that line was entirely

cut off and at 1:27 a. m. on the same day another line was dynamited, resulting in a complete power shut-off in the Copper Basin. On April 14, 1940, a steel structure power tower was blasted and the transmission line severed and thirty minutes afterward another tower was blasted, but the transmission line was only partially disconnected. Again on April 24th a steel structure power tower owned by T. V. A. was dynamited and a line severed and a short time later, on the same day, another power tower was dynamited, again resulting in a complete break in power in the Copper Basin, which caused operations to cease in the Tennessee Copper Company plant.

Freed Long, a former member of the International Union of Mine, Mill and Smelter Workers, was in Polk County when the strike was called at the Tennessee Copper Company mine, but ostensibly was not in its employ. During the course of the strike, he intermittently assisted the strikers and was in the picket line a part of the time. On April 13, 1940, Ott Patterson told Long that some one wanted to see him at Willie McGhee's store, which was located about a hundred yards from Long's house. Long started to the store and on the way met Clyde Walden who told him he was wanted at appellant Anderson's office in Ducktown. Appellant Marion Ellis was at the McGhee store with appellant Anderson's automobile and he took Long in the car to Anderson's office in Ducktown. When they arrived at the office there were present, besides Anderson, Clint Huffman, Clyde Huffman, Johnny McGhee, a lady office assistant, Rans Smith and appellant Woodward. The two Huffmans and Woodward were leaving the office when Long arrived, but Anderson called them aside and talked with them a few minutes in a tone inaudible to Long. After their departure Anderson stated to those present that he and others were working on a plan to shut down the Tennessee Copper Company plant and he wanted Long to assist them. The means to be used in reducing or stopping production were discussed, and Anderson stated they in-

tended damaging the mines inside. It was agreed to dynamite the magazine in one of the mines on the Sunday night following the meeting which would shut off the power.

On April 18, 1940, another meeting was held for the purpose of making further plans and arrangements for dynamiting the transmission lines of the Tennessee Valley Authority and the mines of the Tennessee Copper Company. Long was present at this meeting which was held at appellant Anderson's union office at Isabella, Polk County, Tennessee. There were also present appellants Anderson, Simonds, Woodward, Hubbard and Martin Simonds, Walter Bell, Wayne Henry, Meggs Collins and Johnny McGhee. After they assembled, the door was locked and discussion was had as to plans for dynamiting the power lines. Appellant Simonds protested assigning the two Green boys to again assist him in dynamiting the transmission lines and poles because he said on the prior occasion, April 14th, when he and the others dynamited the lines, the Greens ran off and were of no help. Appellant Anderson said he wanted the power towers and poles blown up again and it was agreed among those present that this would be done. Appellant Simonds was to make the necessary arrangements for the dynamiting of the Blue Ridge transmission line and appellant Woodward was to make the necessary arrangements for dynamiting the Ocoee and Parksville lines. The time agreed on for the dynamiting was April 24th and appellant Woodward said, "I am sure that we can go through with the lower end of it." It was first agreed Long should go down into the mine but afterward, because of his unfamiliarity with the layout, it was decided he should stand guard outside to protect the men who went down to dynamite the magazine and he was given a high-powered rifle by appellant Hubbard for that purpose.

Immediately after these meetings, Long told Sheriff Biggs of Polk County, the names of persons in attendance at them and what appellants and their associates intended to do to stop the operation of the mine. He

advised the sheriff that the power lines and towers of the Tennessee Valley Authority would be dynamited at both ends of the line at 1:20 a. m. on April 24, 1940, and that the magazine at the Isabella mine would be blown up at the same time and three minutes before the time stated by Long, an explosion occurred on the Blue Ridge end of the line and forty minutes later the Parksville, or other end of the line, was dynamited. The lines were approximately twenty miles long. Sheriff Biggs stationed a number of deputies at the Isabella mine on the date and time Long said it was planned to dynamite it, and it was not blown up. The deputies, during the night, noticed a dog up close to the mine and the next morning discovered several shoe tracks within a hundred yards of the mouth of the mine.

Appellant Woodward, in his confession, stated that about April 7, 1940, his co-appellant Anderson instructed him to go to Chattanooga, Tennessee, and bring back to Copperhill some dynamite and that appellant Anderson would meet him later in the day at the Key Hotel in Chattanooga where he would be registered. He also stated that he arrived in Chattanooga about dark, went to a house on Newton Street and there left one of the parties who accompanied him and that then he and another party went to the Key Hotel and there met Anderson and the three of them, together with another individual, attended a speaking at the Hamilton County Court House.

The records of the Key Hotel in evidence show that appellant Anderson and his wife checked in on April 3, 1940, and checked out on April 4th; that they checked in again on April 4th and out on April 5th; checked in on April 5th and out on April 6th; checked in on April 8th and out April 9th; checked in on April 14th and out April 17th; checked in on April 22nd and out April 23rd.

Appellant Anderson testified that he was in Chattanooga on the night referred to in Woodward's confession for the purpose of meeting a conciliator from the Labor Department. Woodward also stated in his confession

that in the course of the conversation between Anderson and him at the Key Hotel, Anderson said they did not have the necessary amount of dynamite and fuse and plans were made for Woodward and another person to drive Anderson's car to Bessemer, Alabama, to get more dynamite. He stated that the car was in the Key Hotel parking lot and Anderson told him to go to the Gulf filling station on Broad Street and wait there. Later Anderson came there with his car and put in Woodward's car a case of dynamite in a sack and told him "there was a sack of potatoes." Woodward then drove his car to a place on Newton Street in Chattanooga and spent the night and left the car there. The next morning Anderson again met Woodward at the filling station and turned over to him Anderson's car to be driven to Bessemer, Alabama, to get more dynamite. Woodward drove to Bessemer and parked Anderson's car and substituted another car which he drove to the Hercules Powder Company where he obtained three cases of 60% dynamite, 500 feet of fuse and a box of caps, for which he paid a little more than $21.00 and signed the name of John M. Cash to the sales slip. This dynamite was taken to Chattanooga, placed in Woodward's own car and by him taken to Copperhill.

The records of the Gulf Refining Company in evidence show that appellant Anderson possessed one of the company's credit cards and on April 9, 1940, purchased from C. H. Jones, operator of a Gulf gasoline station at Broad & Market Streets, Chattanooga, Tennessee, gasoline and oil amounting to $3.34.

The records of the Hercules Powder Company at Bessemer, Alabama, show that on April 9, 1940, John M. Cash bought three cases of 60% Extra LE dynamite, 500 feet Orange Wax Clover Fuse, and 100 No. 6 blasting caps for which he paid $21.7[illegible]. Harry C. Phelps, who made the sale to Cash, identified appellant Woodward as the person who made the purchase under the name of John M. Cash. Three witnesses testified that near where the transmission lines were dynamited they found paper

covering from dynamite and fuse wrapping paper which a fourth witness identified as being identical to that sold by the Hercules Powder Company and which was bought by appellant Woodward.

Appellant Simonds in his confession stated that he and those with him, after blasting one of the poles, walked from McCaysville, Georgia, to Copperhill by way of the Louisville & Nashville Railroad tracks, and when they were crossing a bridge over the Toceoa or Ocoee river, they threw in the river an augur which had been used to bore the holes in the poles to insert the dynamite. Simonds accompanied an agent of the Federal Bureau of Investigation and pointed out to him the exact spot in the river where the augur had been dropped. The agent recovered the augur where Simonds told him it would be found and it was introduced in evidence.

On March 31, 1940, about fifteen minutes before the first dynamiting of the towers and lines referred to in the evidence occurred, appellant Marion Ellis drove appellant Anderson's car into Ducktown, Tennessee, and stopped it about 150 or 200 feet from two deputy sheriffs who were watching him and let someone out of the car. It was dark and these officers were unable to identify the person who alighted. The officers attempted to follow the car but lost it in the darkness. Later about midnight, they overtook it, stopped and searched it and found a brace and bit on the floor board between the front and back seats. At that time appellant had in the car his wife and baby and stated to the officers that they were out riding because the baby had the colic. He also stated that during the night they left the paved highway and drove up a dirt road for the purpose of taking his wife over it, because it was unfamiliar to her. He also stated the person who had gotten out of the car earlier in the night was a hitchhiker whom he had picked up near Copperhill; that the man was a stranger to him and that he took him to were he wanted to go and let him out without ascertaining his name. He denied any knowledge of the presence of the augur in his car.

Appellant. Ellis was a member of the Contract Committee for the strikers and during the st ike spent practically all of his time in appellant Anderson's office and frequently drove Anderson's car and took persons to places as directed by him.

Appellants Robert Lee Rhodes, Robert Lee Ballew and John Davis Queen, testified they were members of the union and attended practically all of its meetings and actively participated in the strike referred to in the evidence. All repudiated every statement in their respective confessions concerning their participation in the dynamiting of the power lines. There is no other evidence in the record connecting any one of them with the charge laid in the indictment.

The undisputed ultimate facts show:

That property of a corporation in which the United States is a stockholder was wilfully injured in violation of U. S. C. A., Title 18, Section 82 (152 Stat. 198) and from the evidence it is fair to assume that the property was destroyed or injured pursuant to a conspiracy in violation of 18 U. S. C. A., Section 88 (35 Stat. 1096).

If the testimony of the witness Freed Long is worthy of credit, there is in the record proper legal, competent and substantial evidence, implicating the following appellants in the conspiracy: Anderson, Simonds, Woodward, Hubbard and Ellis. The fact that Long may have been a self-confessed active hired accomplice in the offense charged in the indictment does not require, as a matter of law, the rejection of his testimony. *Valdez* v. *United States*, 244 U. S. 432, 441. The uncorroborated testimony of an accomplice is sufficient to support conviction. *Ruby* v. *United States*, 61 F. (2d) 617 (C. C. A. 6).

Appellants urge on us that the uncontroverted evidence shows Long to be of such bad character that nothing he might say, standing alone, could properly be considered as substantial evidence from which a jury was warranted in finding beyond a reasonable doubt that the alleged conspiracy was proven. It may be fairly inferred

from the evidence that Freed Long was a spy and a paid informer for the Tennessee Copper Company. Long's story, depraved and shameless though it may brand him, is not inherently improbable nor unreasonable, and the facts and circumstances in the case support what he said. The fact that his reputation for truth and veracity was bad as testified to by several witnesses goes only to his credibility and not his competency. The truth or falsity of his testimony was to be weighed by the jury which saw and heard him. *Betz* v. *United States*, 61 F. (2d) 617 (C. C. A. 6).

Appellants urge on us that the confessions of Simonds, Woodward, Hubbard, Queen, Rhodes and Ballew which were received in evidence by the court against each of them, were without corroboration and therefore highly prejudicial not only to the appellant making the confession, but to the other appellants involved thereby.

There is much division among authorities in respect to the rule of proof in cases involving confessions. The admissibility of such evidence so largely depends upon the special circumstances under which the confession is made that no fixed rule can be formulated which will comprehend all cases. The admissibility of such evidence is necessarily addressed in the first instance to the trial court, and appellate courts have refused to outline with certainty the limits of admission and exclusion. However, a confession, if freely and voluntarily made, is the most satisfactory type of evidence and "is deserving of the highest credit because it is presumed to flow from the strongest sense of guilt and therefore is admitted as proof of the crime to which it refers." *Hopt* v. *Utah*, 110 U. S. 574, 585.

In some of the states there is a statute providing that a confession shall not be sufficient to warrant a conviction without additional proof that the crime charged has been committed and that the confessor was probably connected with its commission. Independent of statutory provisions, the great weight of authority is against the sufficiency of a confession uncorroborated by other proof of the crime to warrant a conviction. The grounds upon

which the rule rests are the hasty and unguarded character which confessions often have, the temptation which, for various reasons, a party may have to state what would best serve his interest whether true or false, and the likelihood of misconstruing or incorrectly reporting what has been said and the danger of conviction where there has been no crime committed and the difficulty of disproving what has been said.

As heretofore pointed out, confessions and admissions, when freely and voluntarily made, have been ever regarded as the most effectual proofs available. There is no greater likelihood of miscarriage of justice due to misconstruction or misreport of what has been said in a case where a person is accused of crime than in a civil action where one person undertakes to and is allowed to repeat what another has said. It is no doubt true that confessions are often made because of fear, with the hope of reward or from other motives, but confessions so obtained are rigorously excluded. When extra-judicial confessions are free from these inherent defects, we know of no good reason why they need corroboration, but because of the fixed rule of most courts that corroboration of a confession is necessary, we do not here feel free to cast it aside. We believe, however, the criticism of the rule expressed by Professor Wigmore is just (4th Wigmore Evidence [2 Ed. 1923] Sec. 2070, p. 406)[1].

[1] The policy of any rule of the sort is questionable. No one doubts that the warning which it conveys is a proper one; but it is a warning which can be given with equal efficacy by counsel or (in a jurisdiction preserving the orthodox function of judges) by the judge in his charge on the facts. Common intelligence and caution, in the jurors' minds, will sufficiently appreciate it, without a laying on of the rod in the shape of a rule of law. Moreover, the danger which it is supposed to guard against is greatly exaggerated in common thought. That danger lies wholly in a false confession of guilt. Such confessions, however, so far as handed down to us in the annals of our courts, have been exceedingly rare (ante, § 867). Such a rule might ordinarily, if not really needed, at least be merely superfluous. But this rule, and all such rules, are today constantly resorted to by unscrupulous counsel as mere verbal formulas with which to entrap the trial judge into an error of words in his charge to the jury. These capabilities of abuse make it a positive obstruction to the course of justice.

Corroboration means to strengthen or add weight and credibility to a thing. Evidence found in a confession need not be corroborated by other positive evidence, but all that is required is some proof that the crime charged has been committed or of circumstances corroborating and fortifying the confession. Proof of any of these facts and circumstances consistent with the truth of the confession or which the confession has led to the discovery of, tending to show the commission of the offense is sufficient corroboration.

Where an offense is committed, the "corpus delicti" is the act itself but where there is a conspiracy to commit such an offense, the corpus delicti is the conspiracy to do the act, and an overt act, pursuant to the conspiracy. In the case at bar, evidence other than the confessions is not required to be such as independently of them establishes the corpus delicti or the confessing defendants' guilt beyond a reasonable doubt. If there is in the evidence, in addition to the confessions, circumstances which, although they may be susceptible of an innocent construction, are nevertheless calculated to suggest the commission of the crime and for the explanation of which the confession of the particular defendant furnishes the key, the case cannot be taken from the jury for failure to show corroboration. All that is required is that there be such substantial corroborative circumstances as will, when taken in connection with the confessions, establish the corpus delicti beyond a reasonable doubt. *Flower* v. *United States*, 296 F. 241 (C. C. A. 5).

The corroborating fact or facts may be found from facts material to proof of the offense discovered as a result of the confessions or they may be such as tend to prove the corpus delicti.

While most courts hold that a conviction cannot be had on extra-judicial confessions of the defendant, unless corroborated by proof aliunde of the corpus delicti, we think that it is not necessary that the evidence of the corpus delicti should itself connect the defendant

with his participation in the crime in order to make the confession admissible. *Ryan* v. *United States*, 99 F. (2d) 864 (C. C. A. 8).

Under the foregoing concept, the confession of appellant Woodward is corroborated by evidence aliunde of the corpus delicti, his purchase of dynamite from the Hercules Powder Company at Bessemer, Alabama, and the finding of the wrappers from the dynamite and fuse near the place where the explosion occurred and the similarity of the wrappers with those used on the dynamite purchased by him.

The confession of appellant Simonds is likewise corroborated by evidence aliunde of the corpus delicti and the finding of the augur in the river where he said in his confession it was thrown. The confession of appellant Hubbard is corroborated by the evidence aliunde of the corpus delicti and the testimony of Freed Long, who testified Hubbard gave him a rifle with which to guard the mine.

The confessions of appellants Queen, Rhodes and Ballew are corroborated only by the evidence aliunde of the corpus delicti which, in our opinion, is sufficient. *Rosenfeld* v. *United States*, 202 F. 469 (C. C. A. 7); *Berryman* v. *United States*, 259 F. 208 (C. C. A. 6); *Wiggins* v. *United States*, 64 F. (2d) 950 (C. C. A. 9); *Pearlman* v. *United States*, 10 F. (2d) 461 (C. C. A. 9); *Litkofsky* v. *United States*, 97 F. (2d) 877 (C. C. A. 2).

It is not permissible to introduce in evidence as against a conspirator the acts or declarations of a co-conspirator which were made or done after the conspiracy had come to an end, but in the case at bar the court instructed the jury that no extra-judicial statements of defendants implicating co-defendants could be binding on such co-defendants. In view of this instruction, the admission of the confessions in evidence does not constitute reversible error as to any of them. *United States* v. *Dilliard*, 101 F. (2d) 829 (C. C. A. 2); *Luteran* v. *United States*, 93 F. (2d) 395 (C. C. A. 8).

The strike of the International Union of Mine, Mill

& Smelter Workers started at the plant of the Tennessee Copper Company on July 14, 1939, and the plant closed until August 28, 1939, when it was reopened. Broughton Biggs, Sheriff of Polk County, employed a number of deputy sheriffs and assigned them to the plant and its vicinity after it had reopened to prevent disorder and destruction of property. The Copper Company furnished a building referred to in the record as the "Y. M. C. A." in which the deputy sheriffs were housed. Bad feeling developed among strikers, the deputy sheriffs and working employees of the company. Much disorder occurred and destruction of the power lines by the use of explosives commenced April 1, 1940. The sheriff and his deputies investigated for the purpose of ascertaining the names of all the strikers who were expert in the use of dynamite. On April 16, 1940, agents of the Federal Bureau of Investigation came into Polk County for the purpose of investigating the destruction of the power lines, and conferred with the sheriff as to conditions. Many persons were interviewed by the sheriff and his deputies and after the agents of the Federal Bureau of Investigation came into the field, many of them were taken by the sheriff and his deputies without warrants to the Y. M. C. A. Building where they were interviewed by the Federal agents. Among those interviewed were twenty-one who were subsequently named in the present indictment as defendants. The court directed the jury to return verdicts of not guilty as to eight of them and submitted the question of guilt of thirteen. Five of these were acquitted and the eight appellants here found guilty. All of the confessing appellants claimed they were subjected to surveillance, continuous examination and intimidation for long periods of time by the sheriff, his deputies and agents of the Federal Bureau of Investigation, and some of them claimed they were deprived of a place to sleep and food to eat and the appellant Robert Lee Ballew testified he was forced to accompany the agents of the Bureau from South Carolina to Copperhill, Tennessee. Appellants also testified that two of the

agents promised them if they would "come clean," and confess, that the Department of Justice would recommend that each one confessing be paroled or placed on probation and that they would recommend to the Commissioner low bail. Appellants also testified they were held incommunicado and denied the right to see relatives, counsel or advisers for several days after they were taken into custody by the sheriff. The sheriff, his deputies and the agents denied all of these statements and testified affirmatively that none of the appellants were in any way mistreated and none of them deprived of food or a place to sleep or the right to see counsel or relatives.

In reviewing the admissibility of a confession as evidence, it is the duty of the appellate court to consider the evidence in relation thereto as a whole, and acting judicially to determine whether or not there are facts or fair inferences to be drawn therefrom, which, if unanswered, would justify men of ordinary reason and fairness in concluding that the proffered confession was involuntary and resulted from improper inducements. Where the evidence as to the voluntary character of a confession, the absence of any threat, compulsion, inducement or assertion or indication of fear is not in dispute, the admissibility of a confession as such is a matter of law for the court to decide. However, where there is a conflict in the facts as to whether the statements were made freely, etc., the facts and the surrounding circumstances should be presented to the jury so that it may properly determine the weight to be given such evidence. *Wilson* v. *United States*, 162 U. S. 613, 624.

Eliminating conflicts in the evidence and opposite inferences, it appears that the confessing appellants Woodward, Hubbard and Simonds were arrested without warrants and placed in custody for a period of six days without being taken before a magistrate or commissioner and that appellants Ballew, Rhodes and Queen were likewise held for more than twenty-four hours. It also appears that all of the appellants were detained at times

in the Y. M. C. A. Building, at times in the County Jail and at other times in the County Court House. It further appears that while in the Y. M. C. A., they were surrounded by the sheriff and his deputies, all of whom were armed and by agents of the Federal Bureau of Investigation. They were intermittently questioned by the agents before their confessions were put in final form and reduced to writing. Each of the confessing appellants was a promoter of the strike at the plant and active in making it effective.

There is no showing that any of the appellants were of tender age or of weak intellect or that any of them were in a weakened physical condition so as to be easily persuaded to do something against their will.

A confession may be voluntary, although made to police officers while in their custody and in answer to their questions where no compulsion is otherwise shown. *Pierce* v. *United States*, 160 U. S. 355, 357; *Hardy* v. *United States*, 186 U. S. 224, 229; *Bilokumsky* v. *Tod*, 263 U. S. 149, 157. The facts that the arrests may have been illegal or made without warrant and that arraignment was deferred, standing alone, do not render the confession involuntary and inadmissible.

We perceive no principle upon which it can be held that a confession, if otherwise admissible, can be rejected for the reason that the prisoner was in custody upon an invalid process or without any process or lawful right. The confession, if voluntary, is admissible whether made to an officer or a private person, and the fact that the arrest was illegal has no relevancy. *United States* v. *Graff*, *14 Blatchf.*, 381 Fed. Cas. 15244; *People* v. *Doran*, 246 N. Y. 409, 159 N. E. 379.

A confession is not rendered inadmissible in evidence, solely on the ground that it was elicited by inquiries and questions asked of the accused. In the absence of anything else to indicate that the confession was induced by duress, intimidation or other improper influences, a confession is admissible in evidence even though obtained after prolonged examination by law

enforcement officers. *Perovich* v. *United States*, 205 U. S. 86, 91.

It is not error to admit in evidence a confession of the accused over the objection that before making the alleged confession, defendant had been refused an opportunity to communicate with counsel, nor is such evidence to be rejected solely on the ground that the accused at the time he confessed or at preliminary questioning was surrounded by law enforcement officers and denied the advice of counsel. *Wilson* v. *United States*, supra.

The case of *Chambers* v. *State of Florida*, 309 U. S. 227, relied on by appellants in support of their contention that their respective confessions were inadmissible, is clearly distinguishable under the facts and lays down no rule of law inconsistent with the decision here.

Giving due weight to all the evidence in the record and all reasonable inferences to be drawn therefrom, we cannot say as a matter of law that the confession of any one of the appellants was extorted from him by the use of force or threats or the holding out of any inducement, or that he was intimidated by the presence of the officers or that his constitutional rights were invaded by reason of the absence of counsel. Appellants contend that the court erred in refusing to permit them to ask Sheriff Biggs how many deputies he had employed to guard the premises of the Tennessee Copper Company and whether or not they were paid by the Copper Company and also whether the Sheriff had instructed his deputies to search all cars passing over the highways in the vicinity of the mines. In our opinion, the proffered testimony was irrelevant and if answers had been elicited from the witnesses, they would have thrown no light on the issues in this case.

Appellants insist that the court should have charged the jury that before it could consider the alleged confessions, the jury must find that the confessions were freely and voluntarily made beyond a reasonable doubt and further charge that the confessions should be treated

with distrust and scanned with care, because at the time made appellants were under arrest and surrounded by state and federal officers. A fair appraisal of the whole charge shows that the request of the appellants was substantially incorporated therein. However, it is not the law that there is a presumption against a confession or that the government carries a heavy burden in establishing its voluntary character and that this burden is not met if there is any evidence tending to impeach the testimony of those securing the confession. *Gray* v. *United States*, 9 F. (2d) 337 (C. C. A. 9); *Murphy* v. *United States*, 285 F. 801 (C. C. A. 7); *Hopt* v. *Utah*, supra. Judgment affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of *Mitchell Clifton Anderson, et al.*, v. *The United States of America*, No. 8895, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 19th day of December, A. D. 1941.

J. W. Menzies,
Clerk of the United States Circuit
(seal) *Court of Appeals for the Sixth Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 6, 1942.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1346)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, ET AL.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

W. H. NORVELL,
Counsel for Petitioners.

E. B. BAKER,
ROBERT C. HUNT,
J. A. LIPSCOMB,
J. M. C. TOWNSEND,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit entered on the 4th day of December, 1941, affirming a judgment of conviction of the petitioners from the District Court of the United States for the Eastern District of Tennessee on a charge of conspiracy in violation of 18 U. S. C. A., Section 88, the conspiracy alleged being to vio-

late 18 U. S. C. A., Section 82, as amended; and penitentiary sentences inflicted on all petitioners.

Opinion Below.

The opinion of the court below filed December 4, 1941, has not yet been reported, but is incorporated in the record at page 868; the judgment and sentences in the District Court were entered on February 3, 1941 (R. 31-40).

Jurisdiction.

Jurisdiction was acquired by virtue of an indictment returned by the United States Grand Jury for the Eastern District of Tennessee on November 14, 1940 (R. 2-22), charging petitioners and thirteen other persons with conspiracy in violation of 18 U. S. C. A., Section 88, the conspiracy being to violate 18 U. S. C. A., Section 82, as amended, the specific charge being that the petitioners and thirteen other persons conspired and confederated together to destroy property belonging to the Tennessee Valley Authority, a corporation in which the United States of America was a stockholder, and did commit many overt acts pursuant to said conspiracy. Application for stay of mandate has been made to the Circuit Court of Appeals but has not yet been acted upon.

The jurisdiction of this Court is based upon Judicial Code, Sec. 240, as amended; U. S. C. A., Title 28, Sec. 347, and on alleged violation of the Fifth Amendment to the Constitution of the United States.

Questions Involved.

First. Four questions are involved. Whether confessions obtained during a strike by the sheriff of a county, company guards or special deputy sheriffs and agents of the Federal Bureau of Investigation are competent when in the in-

stance of Felton Moore Woodward, John Edward Simonds, and Earl Hubbard they had been in custody in a building owned by their former employer and whom they were striking against, for six days and had been quartered in three different places, but constantly surrounded by deputy sheriffs and agents of the Federal Bureau of Investigation and held without any legal process; in the instance of John David Queen, Robert Lee Rhodes and Robert Lee Ballew, they had been held in the same manner for more than twenty-four hours, and all of them not being permitted at any time to see relatives, friends, counselors or advisers, and all were questioned continually by Federal agents and the sheriff.

Second. In the instance of John David Queen, Robert Lee Ballew, Robert Lee Rhodes, can they be convicted on their uncorroborated confessions alone.

Third. The trial court refused to permit petitioners to show by various witnesses that during the course of the strike the Tennessee Copper Company, their former employer, had paid all the special deputy sheriffs their salaries through the sheriff of the county; that during a course of many months they had not been permitted to be at large on the highways or streets at night; that they had been coerced and intimidated over a long period of time; their homes and cars searched regularly without process of law; the trial court charging the jury charged the jury that the above was the theory of the petitioners, but had previously declined to allow proof to support this theory. The Circuit Court of Appeals held the evidence was immaterial.

Fourth. As to petitioners Marion Luther Ellis and Mitchell Clifton Anderson, whether there is any evidence of the *corpus delicti* and any evidence to support the verdict of the jury and the judgment of the District Court, and the judgment of the Circuit Court of Appeals.

Summary Statement of Facts.

First. On July 14, 1939, the International Union of Mine, Mill and Smelter Workers called a strike against the Tennessee Copper Company, a copper smelting concern located in Polk County, Tennessee, in the Eastern District of Tennessee. The strike continued from that date until after the offenses charged in the indictment in the present case. Shortly thereafter the Company decided to reopen the plant, and in order to reopen the Sheriff of Polk County, Tennessee, employed a large number of special deputy sheriffs, some of which were from Polk County, and some from other places, to protect and take care of the Copper Company's interests (R. 550-1). The Copper Company owned a building in Copperhill, Tennessee, Polk County, known as the Y. M. C. A. Building. This building was turned over to the Sheriff of Polk County by an official of the Copper Company on August 23, 1941 (R. 552-733), as a place to arrange barracks for the special deputy sheriffs. A large number of special deputy sheriffs were quartered in said building in Army style until after the petitioners in this case were arrested from April 24th until April 29th, 1940 (R. 553), and at the time of said arrests and during the time petitioners were confined in said building between 15 and 25 deputies were quartered there.

On the night of March 31, 1940, two power lines belonging to the Tennessee Valley Authority, a corporation, in which the United States of America is a stockholder were dynamited and the power partially shut off (R. 125). On the night of April 14th, 1940, two more power towers were blown down (R. 125). On April 16th, 1940, agents Mann and Roche, of the Federal Bureau of Investigation arrived in Polk County, Tennessee, and started an investigation of the explosions, in connection with the Sheriff of that County (R. 168-332-3). Thereafter the two said agents worked with

the Sheriff of the County, he attended their meetings, went out on investigations with them, until after the arrests in this case (R. 334-5). Sometime shortly after midnight on the night of April 22, 1940, the Sheriff of Polk County went to the hotel where the agents of the Federal Bureau of Investigation were staying and took with him one Freed Long, and there advised the Federal Agents the lines would be blown again at 1:20 the next night (R. 466-7); the lines were blown shortly after midnight on the night of the 23rd of April, 1941.

Thereupon the Sheriff discussed with the Federal Agents the question of who he and they thought guilty of the offense (R. 556), and decided that there were about eighty or ninety men out on strike who had knowledge of how to use explosives, and thereupon acting in concert with said agents proceeded to arrest all said men without warrants, (R. 192) and without taking them before a magistrate or United States Commissioner, and incarcerating them mostly in the Copper Company's Y. M. C. A. Building, and in what was known as the City Jail in Copperhill, and some in the County Building. Some of the men were kidnapped in the State of North Carolina; some in the State of Georgia, and brought back to this private building without extradition or removal order.

On April 24th, 1940, and April 25, 1940, six additional agents of the Federal Bureau of Investigation arrived in Copperhill, Polk County, to assist in the investigation. The agents and the sheriff then proceeded to question the various men in custody, doing this continually, different agents examining the same man at various times during the day. All of the questioning was done in the Copper Company's Y. M. C. A. Building; at all times large numbers of these special deputy sheriffs were circulating around through the buildings, laughing, talking and always bearing arms (R. 307-553-4).

At times petitioners and others would be transferred to the City Jail or County Building in Copperhill; some of them spent the nights in the bunks occupied by the special deputies while they were on duty, (R. 554-5) and other special deputies were sleeping in the same room. On occasions from three to seven men were placed in the City Jail in a cell seven by seven feet and there forced to spend the night, with only two bunks in said cell, the others having to sleep on the concrete floor.

The agents of the Federal Bureau of Investigation had received confidential information of who was guilty and what the truth was and when one of the petitioners or others would say anything contrary to their confidential information they were told they were lying and the agents didn't want to hear that. When statements were finally obtained they substantially conformed to what the agents knew the truth was beforehand, from their confidential information. Confessions were not taken until they conformed to the Agents confidential information. The agents knew whether petitioners were telling the truth because they had this confidential information about what the truth was (R. 354-5-339-40-357-398-9).

The agents of the Federal Bureau of Investigation did not care whether the petitioners had anything to eat or not (R. 174).

The agent in charge, Plaxico, told the chief Deputy Sheriff of Polk County, who was assisting in the investigation, that any of petitioners who would come clean and tell the truth he would recommend to the District Judge they be placed on probation and Campbell told the petitioners what Plaxico had said (R. 172-3). After the arrest and commitment Agent Mann did recommend to the United States Commissioner that the bond of some of the petitioners who has signed confessions be set lower than other defendants, and later asked that petitioner Woodward's bond be reduced (R. 217-8).

No person was permitted to see petitioners while they were in custody; and if anybody did get in to see any of them it was a mistake on somebodys part (R. 555). After they were removed from Copperhill to the jail at Chattanooga and formal complaints sworn out orders were given that they were not to see their families or counsel, and they were not permitted to see members of their family for several days, that is on or about May 6, 1940 (R. 266-645-770-773).

Finally after six days petitioners Felton Moore Woodward, John Edward Simonds, and Earl Hubbard, made statements to the Federal Agents. They had been questioned in relays by Federal Agents for six days. It took Felton Moore Woodward seven or eight hours to tell the Agents his connection, when according to them he was trying to tell them all the time; sometimes he would hesitate as much as five minutes before he could answer a question, he appeared groggy, and when he couldn't remember dates or details of what happened, these details were supplied from the confidential information the agents had and placed in his statement (R. 339-341-2).

The petitioners John David Queen, Robert Lee Ballew and Robert Lee Rhodes, were not held as long as the petitioners Woodward, Simonds, and Hubbard. However, they were subjected to the same sort of treatment while in custody; Ballew was kidnapped in North Carolina and forcibly removed to the Copper Company's Y. M. C. A.; Queen had a small baby at home ill with pneumonia and was told if he would sign the statement he could go home and see his baby. The statements finally obtained in general conformed to the agents confidential information (R. 339-40).

Each of the petitioners denied the contents of his confession and testified that they had practically no food; they were constantly surrounded by Federal Agents and armed special deputy sheriffs; that they were promised reward for making statements; and that drinks they re-

ceived were doped; a doctor was called for Hubbard after an all day session; and that finally in sheer desperation they signed anything they were told to sign; they had been on strike for a long period of time and the special deputy *sheriffs or company guards* were their bitter enemies.

Each and every petitioner, together with the persons acquitted, testified in their own behalf, and each proved that his character and reputation for truth and veracity was good.

Petitioners aver that the conduct above set out violated their rights under the 5th Amendment to the Constitution of the United States.

Second. There is no evidence against the petitioners John David Queen, Robert Lee Rhodes, and Robert Lee Ballew except their alleged confessions, which are not corroborated by any other evidence. The Court of Appeals so held but said there was some evidence that the crime of conspiracy had been committed, and that this constituted the *corpus delicti* as to these petitioners even though they were not connected in any way except through their confessions. The alleged confessions of said petitioners show that they participated in the commission of certain substantive offenses in Fannin County, Georgia, where one of the lines dynamited was located, and shows no participation elsewhere. There is no evidence circumstantial or direct connecting said petitioners with the offense charged except their naked confessions.

Third. The petitioners offered to prove by various Government witnesses that the special deputy sheriffs employed to guard the Copper Company's property were in fact paid their salaries by the Copper Company; that they had over a period of months searched all strikers' cars out after dark, and strikers' homes, and had in general mistreated the

strikers and abused them and their families and created a general reign of terror in Polk County. The trial court excluded this evidence, but in charging the jury charged that it was the theory of petitioners and the other defendants that it was the theory of petitioners that this was the reason they were in terror of the deputy sheriffs, and one of the reasons they claimed they had while surrounded by such deputy sheriffs and Federal Agents they had signed the so-called confessions. The case was thus submitted to the jury on a correct charge of petitioners theory but without evidence to support said theory, same having been excluded by the court. The Circuit Court of Appeals held this evidence immaterial (R. 560-553-608-157-8-154-568-551).

Fourth: There was no evidence to submit the case to the jury as to petitioners Marion Luther Ellis and Mitchell Clifton Anderson. The *corpus delicti* was not shown except by one witness who was impeached and shown to be a person of such character that his oath did not amount to evidence in any degree. In any event since petitioner Anderson was the International Representative of the Union and he was charged by the Government with being the chief conspirator, his defense was prejudiced by the introduction of the alleged confessions; and Ellis was also active as a Union officer during the strike.

Reasons for Granting the Petition.

First, The decision of the Sixth Circuit Court of Appeals in reference to the confessions is in conflict with the decision of this Court in the case of *Chambers* v. *State of Florida*, 309 U. S. 227 and *Bram* v. *United States*, 168 U. S. 532, and *Purpura* v. *United States*, 262 Federal 473, 4th Circuit. The conduct of the Federal Officers and the Sheriff and special deputies in this case is probably considerably worse

than that of the officers in *Chambers* v. *State of Florida*, and certainly much worse than that in *Bram* v. *United States*, and *Purpura* v. *United States*. There should be some limit placed on Federal officers as to the time and place they may question and examine a person not charged with any offense. If they can hold a person six days under the circumstances here shown they can hold him seven, eight, or nine or ten days or longer. The fact that the question of the voluntary nature of the confessions was submitted to the jury is immaterial as was held in the *Chambers* case. The confessions were obtained in violation of petitioners' rights under the Fifth Amendment to the Constitution of the United States.

Two. There is a conflict in the decision of the Circuit Court of Appeals in reference to conviction on an uncorroborated confession and the decision of this Court in the case of *Warzower* v. *United States*, 312 U. S. 342, 61 Sup. Court 603, and *Langer* v. *United States*, 76 F. (2d) 827 (8th Circuit) and *Oldstein* v. *United States*, 99 F. (2d) 305 (10th Cir.) and should be decided whether in a conspiracy case a confession uncorroborated by any evidence circumstantial or otherwise that a party participated in a substantive offense is sufficient to establish the *corpus delicti* of conspiracy as to him, when there may be some evidence that other parties at some time or place may have entered into a conspiracy.

Third. This is a new question of law. It involves the proposition that the trial court excludes substantial pertinent evidence from the consideration of the jury and then in charging the jury charges that said evidence constituted the theory of the petitioners, when all evidence bearing on that theory had been excluded from the consideration of the jury. This is a new and substantial question of Federal Law and should be decided by this Court.

Fourth. The only evidence of the *corpus delicti* or otherwise as to petitioner Anderson was by an impeached witness, impeached to the extent that his testimony had no probative value and did not amount to proof. The court should determine whether a conviction can be obtained based on such evidence. The court should pass on the entire evidence to determine whether there is any evidence to sustain a conviction against petitioners Mitchell Clifton Anderson and Marion Luther Ellis.

In the decision below in the instant case the Circuit Court of Appeals decided the above important questions of law contrary to the decisions of this Court and of other Circuit Courts of Appeal. This decision leaves the law in a state of uncertainty and the determination of these questions by this Court will settle the law on said points and remove the uncertainty and make for uniformity as to rights of defendants in criminal cases in the United States Courts.

Wherefore, your petitioners pray that a Writ of Certiorari may issue out of and under the seal of this Court directed to the Circuit Court of Appeals for the Sixth Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in this case, entitled in that Court Mitchell Clifton Anderson et al., appellant, *v.* United States of America, Appellee, to the end that said cause be reviewed and determined by this Court as provided by law, and that your petitioners may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and that the said judgment of the Circuit Court of Appeals and the judgment of the District Court of the Eastern District of

Tennessee be reversed by this Honorable Court and the petitioners awarded a new trial.

MITCHELL CLIFTON ANDERSON,
JOHN EDWARD SIMONDS,
EARL HUBBARD,
FELTON MOORE WOODWARD,
MARION LUTHER ELLIS,
ROBERT LEE BALLEW,
JOHN DAVID QUEEN,
ROBERT LEE RHODES,
By E. B. BAKER,
Attorney.

W. H. NORVELL,
Counsel for Petitioners.

Of Counsel:
E. B. BAKER,
ROBERT C. HUNT,
J. A. LIPSCOMB,
J. M. C. TOWNSEND.

STATE OF TENNESSEE,
County of Hamilton:

E. B. Baker being duly sworn says that he is one of the Attorneys and counsel for all of the petitioners above named and as such had personal charge for them of the case in the foregoing petition mentioned in the District Court of the United States for the Eastern District of Tennessee and in the United States Circuit Court of Appeals for the Sixth Circuit; that he has read the foregoing petition and that the facts therein stated are true to the best of his information and belief.

E. B. BAKER.

Sworn to and Subscribed, before me, this the 6th day of January 1942.

BERTHA B. BEARD,
Notary Public.

Commission expires 4-25-1944.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Opinion Below.

The opinion of the Circuit Court of Appeals will be found in the record at pages 868 and 884. The judgment in the District Court sentencing petitioners to the penitentiary and imposing fines was entered on February 3, 1941 (R. 31-40).

II.

Jurisdiction.

Jurisdiction was acquired as set out in the petition for certiorari (P. 2).

III.

Questions Involved.

The questions of law involved are fully set out in the petition for certiorari at pp. 2-3.

IV.

Statement of the Case.

While there is a fair statement of the case contained in the petition for certiorari we believe it is proper to go into this phase more fully.

On July 14, 1939, the International Union of Mine, Mill and Smelter Workers called a strike against the Tennessee Copper Company, a copper smelting concern located in Polk County, Tennessee, in the Eastern District of Tennessee. The strike continued from that date until after the offenses charged in the indictment in the present case were alleged to have been committed. On August 23, 1939, the Tennessee Copper Company decided to re-open the plant which had been shut down since the beginning of the strike. The Sheriff of Polk County, B. E. Biggs, was on friendly terms with the Copper Company and at their instance employed a large number of men, as he says, to protect their property and keep order and gave them commissions as deputy sheriffs (R. 551). Some of these men were from Polk County and some from other places (R. 163). The Copper Company owned a building in Copperhill, Tennessee, which had formerly been used as a Y. M.

C. A. On August 23, 1939, when the Copper Company decided to re-open the plant and send out notices to the employees this building was turned over to Sheriff Biggs of Polk County, by an official of the Copper Company as a place for these special deputy sheriffs to live. As Sheriff he did not pay any rent on the building and immediately quartered, in army style, quite a number of deputy sheriffs in said building (R. 550-1-2-733). Immediately after the company re-opened, various acts of violence were committed by both sides. As is usual in a labor controversy there is a great deal of violence and where special deputy sheriffs or guards are placed on duty in large numbers the strikers as a matter of course would entertain a very bitter feeling towards the deputies. These acts of violence and trouble in the strike continued until the night of the 31st of March, 1940, when two power lines belonging to the Tennessee Valley Authority, a corporation in which the United States of America is a stockholder, were dynamited and the power partially shut off (R. 125).

Here it might be well to describe the situation of the power lines. There are two power lines running into Copperhill, Tennessee, one known as the Blue Ridge or Parksville line, which runs from Parksville, Tennessee, in Polk County, into Copperhill. The other line originates at Blue Ridge, Fannin County, Georgia. In the event only one line was blown the power would not be shut off in Copperhill, but if both lines went out at the same time all of the power was shut off (R. 129). In each instance when the dynamitings occurred one occurred in Fannin County, Georgia, on the Blue Ridge Line, and one in Polk County, Tennessee, on the Parksville line.

On the night of April 14, 1940, two steel power lines or towers were blown down. On the night of April 23, 1940, the lines were again blown down in the same manner (R. 125).

Prior to the dynamiting on April 23rd the Federal Bureau of Investigation had been notified and on April 16, 1940, had ordered two of their agents, Mann and Roach, into Polk County for the purpose of making an investigation (R. 168-322). The two agents from then on until the night of the 23rd worked in connection with Sheriff Biggs of Polk County and the Sheriff went with them on their investigations. They constantly associated with the Sheriff and discussed with him who he thought might be guilty (R. 332-3). Sometime, shortly after midnight on April 22, 1940, the Sheriff of Polk County went to the Hotel where he met Agent Mann and carried with him one Freed Long and there advised the said Federal Agent that the power lines would be blown down again at 1:20 the next night (R. 466-7-558). The lines were blown at 1:17 on the night of April 23, 1940 (R. 557). Thereupon the Sheriff and Agents Mann and Roach discussed in detail who they thought might be guilty of the offenses (R. 556). The Sheriff advised agents Mann and Roach that there were 80 or 90 men out on strike who had knowledge of how to use explosives and told them that he thought these men were guilty and said that they would lock up all the men whose names had been mentioned (R. 192). The Federal Agents wanted a place to talk to these men, as they say, or to interview them, told him they had to have some appropriate place to talk to them and the Sheriff advised them that he had an appropriate place; the Agents told the Sheriff that they wanted to talk to all the persons that he suspected and thereupon the Sheriff took the 80 or 90 men into custody so that the agents could talk to them (R. 352-3). At that time there were still stationed at the Y. M. C. A. building, owned by the Copper Company, 15 to 20 of these special deputy sheriffs, all of whom slept on cots in the upper floor of the building (R. 171-553). All of the 80 or 90 men taken into custody by the Sheriff so the Federal Agents could talk to them were picked

up without warrants or any legal process of any kind and they were advised at the time they were picked up that someone wanted to talk to them at the Y. M. C. A. for a few minutes (R. 548-9-559-60-1).

Petitioners Felton Moore Woodward, John Edward Simonds and Earl Hubbard were picked up in this manner on the 24th day of April, 1940, and carried to the Y. M. C. A. Shortly after they reached the Y. M. C. A. they were questioned by Agents of the Federal Bureau of Investigation. On the 24th and 25th of April, 1940, six other agents of the Federal Bureau of Investigation arrived to assist in the questioning (R. 302). This questioning continued daily and nightly until these three petitioners on the 28th and 29th of April, 1940, broke down and made statements. They had been questioned time after time during this five day period by the Agents and by the Sheriff. There is in Copperhill what is known as the City jail. At times the petitioners would be taken from the Y. M. C. A. to the City jail to spend the night. On occasions as many as five of them were placed in a cell 7' x 7' which contained only two small steel bunks to sleep on, each of these only large enough for one man to get on, the others having to sleep on the concrete floor (R. 682-734). While they were being questioned at the Y. M. C. A. these 15 to 25 armed deputy sheriffs, or company guards, constantly circulated through the building all bearing arms, laughing and talking (R. 553-4). The Agent in charge of the investigation, H. E. Plaxico, told the Chief Deputy Sheriff of Polk County, Roxie Campbell, that any of the petitioners who would make a statement he would recommend to the United States District Judge that they be placed on probation and said Campbell thereupon went to the City Jail, where five persons were incarcerated in this 7' x 7' cell, and told them what Plaxico had said (R. 272-3).

Through some unknown source the Federal Agents had secured what they called "confidential information" as to who was guilty of these offenses and how they happened and what all the facts and circumstances were and during their various examinations of petitioners constantly reminded them that they had this "confidential information" and knew what the truth was and if one of the petitioners made a contrary statement the Agents told them that they did not want to hear it that way; that that was contrary to their "confidential information". Finally when the petitioners broke and made the confessions involved here, they conformed to what the Agents knew the truth was from their "confidential information". The source of this "confidential information" was never disclosed (R. 354-5; 339-40; 357; 398-9).

It took the petitioner Felton Moore Woodward more than seven hours to give the Agents his confession, even though at all times, according to their testimony, he was trying to tell them how it happened. When he couldn't remember when something happened the Agents referred to the "confidential information" and reminded him of that fact; he appeared to be groggy and at times it took him as much as five minutes to answer a simple question propounded by the Agents, even they at all times during this seven-hour grilling, say he was trying, as aforesaid to tell exactly what had happened (R. 341-2-3; 329).

The petitioner Robert Lee Ballew was kidnapped in the State of North Carolina, there was no legal process outstanding for his arrest and forcibly brought across the State line without process of any kind to the Y. M. C. A. building and there incarcerated and even though the Agents testify that after they had interviewed him they turned him loose and told him he could go home as far as they were concerned, he was not permitted to go and was held until after

formal complaint was sworn out on the night of April 29th (R. 805-814-716-17).

The Federal Agents and Sheriff's force went into the State of North Carolina also and kidnapped Martin Simonds, one of the original defendants, who was acquitted (R. 634). They went into the State of Georgia and kidnapped Benjamin Costen Cross and carried him across the line without legal process and to the Y. M. C. A. building (R. 242-3).

As corroborating the statement of Roxie Campbell that he was told by Plaxico he would recommend probation for the petitioners who would confess, Agent R. T. Mann on April 30th at the committment hearing in Hamilton County recommended at that time to the United States Commissioner that the bonds required of some of the petitioners who had made confessions, be made lower than that of others (R. 217) and on May 3, 1940, said Agent Mann recommended to the United States Commissioner that the bond of petitioner Felton Moore Woodward be reduced from $3,000.00 to $1,000.00 (R. 218).

During the time these petitioners were confined in the Y. M. C. A. they were not permitted to see relatives, friends, counsel or advisers and if anybody got into the Y. M. C. A. besides deputy Sheriffs and Agents it was a mistake on somebody's part because the Sheriff had given orders that no strangers were to be allowed to enter (R. 555).

After the petitioners were brought to the Hamilton County Jail on April 30, 1940, orders were left by one of the Federal Agents with the jailer that they were not to be permitted to see the members of their families or to have visitors or to see counsel (R. 266). As a matter of fact on a regular visiting day on May 6, 1940, Wayne Henry's wife (who was acquitted) went to the Hamilton County Jail and tried to see her husband and was even at that late date denied the privilege of seeing him (R. 645-774), so as the mat-

ter actually stood these petitioners were not permitted to see their families from April 24th, 1940, to May 6th, 1940. On May 1, 1940, when counsel went to the Hamilton County jail and asked for the privilege of seeing petitioners they were turned away and a protest was lodged with the United States District Attorney and he told counsel for petitioners that they had a right to see them but that he could not enter an order (R. 645-773). On May 2, 1940, petitioners were allowed to see counsel one at a time, but no two of them could be seen together and the first time counsel got to see the petitioners altogether was on the 6th day of May, 1940, when the preliminary hearing was set before the United States Commissioner and that was at the court room (R. 646-773).

This statement of facts in reference to these confessions is drawn from the testimony of the Government witnesses and does not take into consideration the testimony of the petitioners. The only exception to the above is the testimony of the United States Commissioner in reference to the bonds and the testimony of Attorneys who tried to see petitioners and the jailor at the Hamilton County jail.

The petitioners on the other hand testified that they were abused, deprived of food (R. 206; 225-6; 249; 253), a place to sleep (R. 203-250), were compelled at times to sleep with the deputy sheriffs in the Y. M. C. A., sometimes occupying the same beds as the deputy sheriffs (R. 202); that they were given nothing to drink at times, at times were given coffee that was doped (R. 206-228); deprived of water to drink, called damn liars (R. 206), damn lying son-of-a-bitch (R. 239) and other vile names; questioned until late at night; told that they would be sent to the penitentiary fifteen to thirty-five years if they did not confess and would get out light if they did (R. 231-237). Earl Hubbard testified that he was deprived of the right to smoke, have a drink of water and could not see very well without his glasses, was

deprived of them, that he was questioned to such an extent that it was necessary to call a doctor and the doctor was called and says he was questioned on one occasion in continual relays from early in the morning until after dark at night (R. 204-5-6). Incidentally most of this statement is corroborated by the Federal Agents who nearly all admit that at sometime during the day they saw him in the room where he said he was and most of them admit that at some time during the day they did question him. When John Edward Simonds asked if he might see counsel he was told that he did not need counsel and had gotten awfully damn smart (R. 230). John David Queen, whose baby had pneumonia, was told if he would go on and make a statement he could go home and see his baby (R. 683).

The Circuit Court of Appeals cites as authority for the proposition that the confessions of these petitioners were free and voluntary, several cases. The first is the case of *Pierce* v. *U. S.*, 160 U. S. 355, 57. The court said in that case, and this is all that was said in the opinion in reference to the confessions, as follows:

> "The admission of certain statements made by the defendants while they were under arrest and handcuffed was also objected to. No exception was taken to the admission of this testimony, and the court properly held that the mere presence of officers is not an influence. Confessions are not rendered inadmissible by the fact that the parties are in custody, provided that such confessions are not extorted by inducements or threats. Hopt *v.* Utah, 110 U. S. 574, 583; Sparf *v.* United States, 156 U. S. 51, 55. The so called confessions show merely that the defendants acted in a somewhat suspicious manner when first arrested, saying, 'If we killed him you prove it,' 'that is for us to know, and you to find out.' And that they refused to tell their names. There was clearly no objection to this testimony."

The next case cited is that of *Hardy* v. *U. S.*, 186 U. S. 224, 229. In that case the Court said:

> "So the question is whether voluntary statements made by a defendant before and after a preliminary examination are inadmissible in evidence because made to the magistrate who in fact conducted the preliminary examination. We know of no rule of evidence which excludes such testimony. Of course, statements which are obtained by coercion or threat or promise will be subject to objection. Bram *v.* United States, 168 U. S. 532. But so far from anything of that kind appearing the defendant was cautioned that he was under no obligations to make a statement: that it would be used against him if he made one, and that there was a proper time for him to make one if he so desired. Without even a suggestion, he insisted on making, prior to the examination, a statement which was reduced to writing and by him signed and sworn to, and after the examination was over and he had been placed in jail, he had an interview with the magistrate and volunteered a further statement. Affirmatively and fully it appears that all that he said in the matter was said voluntarily, without any inducement or influence of any kind being brought to bear upon him. Indeed, it is not claimed by counsel that there was any improper influence, his contention being only that the provisions of the statute with respect to a statement pending an examination were not complied with in respect to these statements."

The next case cited is that of *Bilokumsky* v. *Todd*, 263 U. S. 149, 157. That case involves a deportation proceeding which is civil in nature and not governed by rules of the criminal courts and the statement was made to an immigration officer. The Court said in that case:

> "It is urged that the admission of Bilokumsky's examination renders the hearing unfair because it is inconsistent with fundamental principles of justice embraced within the conception of due process of law.

The argument is that if a judgment of deportation is to rest upon admissions attributable to the person to be deported, the admissions must have been made by him as a free agent and under circumstances which raise no doubt whether they were in fact made. Deportation is a process of such serious moment that on all controverted matters the executive officers should consider the evidence with close scrutiny. But here there was no denial of alienage; and a landing certificate was introduced by the Government which, when connected with the statement in Bilokumsky's examination, tended in some respects to corroborate it. Moreover, the statement that one is an alien is not the confession of a crime. Except in case of Chinese, or other Asiatics, alienage is a condition, not a cause, of deportation. So far as appears, there was nothing in the circumstances under which Bilokumsky was examined which would have rendered his answer inadmissible even in a criminal case. The mere fact that it was given while he was in confinement would not make it so. And since deportation proceedings are in their nature civil, the rule excluding involuntary confessions could have no application."

The Circuit Court of Appeals also cites the case of *Perkoich* v. *U. S.*, 205 U. S. 86, 91. The only reference in that case in any way to a confession is as follows:

"Now it is alleged that there was error in the overruling the motion made by the defendant to strike out all the testimony given by a deputy marshal of conversations between him and the defendant. As these confessions were not induced by duress, intimidation or other improper influences, but were perfectly voluntary there is no reason why they should not have been received."

The case of *People* v. *Doran*, 246 N. Y. 409, 159 N. E. 379, is also cited as authority for the position that the confessions were voluntary. In that case Doran was charged with

murder and had made a confession. He testified that he had been abused before the confession was made and this was all the evidence offered in his behalf. A well known doctor in the community, a newspaper man, four police officers, the assistant District Attorney and his stenographer all testified that the confession was free and voluntary in every respect on behalf of Doran. The court properly submitted the voluntary nature of the confession to the jury and properly instructed the jury if it was not free and voluntary that they should disregard it. These are all the cases cited by the Circuit Court of Appeals. None of them have any bearing whatever on the present case. It is an elementary rule of law that if a confession is absolutely free and voluntary in every respect it is admissible in evidence and that is what the cases cited by the Circuit Court of Appeals hold.

The cases cited by the Circuit Court of Appeals are not in conflict with applicable decisions of this Court and neither are they authority for the propositions of law advanced by the Court of Appeals. The decision of the Sixth Circuit Court of Appeals is directly in conflict with *Chambers* v. *State of Florida*, 309 U. S. 227, and *Bram* v. *U. S.*, 168 U. S. 532; and *Purpura* v. *U. S.*, 262 Fed. 473 (4th Circuit).

II.

The Court of Appeals held (R. 878-879) that if a conspiracy existed at some place and even though there was no connection whatever shown between the person making the confession and the existence as above stated of the conspiracy was shown then that was sufficient to sustain a conviction. There is absolutely no proof of any kind in the record showing the identity of Robert Lee Rhodes, Robert Lee Ballew and John David Queen except that the court held that there was some evidence that a conspiracy existed.

and then further held that the confession was sufficient for a conviction and cited the case of *Ryan* v. *U. S.*, 99 F. (2d) 864 (8th Circuit). The other cases cited by the Circuit Court of Appeals do not go this far. The decision in the *Ryan* case and in the present case is in conflict with the decision in the case of *Warzower* v. *U. S.*, 312 U. S. 342, 61 S. Ct. 603, and *Langer* v. *U. S.*, 76 F. (2d) 827 (8th Circuit), and *Oldstein* v. *U. S.*, 99 F. (2d) 305 (10th Circuit).

III.

The trial court sustained exceptions to the following questions asked the Government's witness, B. E. Biggs, as follows:

> "Now, Sheriff, for some period prior to these explosions and all during the time of these explosions I will ask you if you didn't have a standing order on file that all your deputies were to search all these defendants' cars that were found out at night?
>
> Mr. Frazier: We object to that.
>
> Court: Exception sustaind.
>
> Mr. Baker: That is asked for this purpose, there is a great deal of testimony some of the defendants were transporting powder back and forth through Polk County. I want to show by this witness those were stopped.
>
> Court: Sustain the exception.
>
> Mr. Baker: Except to your Honor's ruling" (R. 560).

The trial court sustained exception to the following question asked the Government's witness, B. E. Biggs, as follows:

> "I will ask you this question, Sheriff, if the Copper Company wasn't as a matter of fact paying those deputies you had there?

Mr. Frazier: I object to that.

Court: Sustain the exception.

Mr. Baker: We want to except to your Honor's ruling" (R. 553).

The court sustained exception to the following question asked the defendant Marion Luther Ellis:

"Q. Since the Government has asked you about it, how many times had you been searched before that time?

Mr. Badgett: I didn't ask about that, we object.

By Court: Objection sustained.

Mr. Baker: We except to the Court's ruling.

"Q. Had you been searched before that time?

Mr. Badgett: We object to that because immaterial.

By Court. I don't see the materiality of it.

Mr. Baker: I would like to have the jury excused and go into that matter.

By Court: The Court does not think it is competent, even to go into the record. Objection is sustained.

Mr. Baker: We except to the Court's ruling."

The trial court sustained exception to the following question asked the Government witness, Pryor Crowe, as follows:

"Q. How many extra deputy sheriffs were put on? (meaning at and during time of strike).

Mr. Badgett: I renew my objection. That has gone far enough, it is wholly immaterial, and I did not go into that on direct examination.

Mr. Baker: It shows the motive and purpose back of this whole prosecution. We will make it competent.

Mr. Badgett: I object to that statement.

Court: I sustain the objection. I cannot see where a deputy sheriff or a guard would have anything to do with dynamiting Government property.

Mr. Baker: We will connect it up later. We except to the Court's ruling" (R. 157-8).

The trial court sustained exception and excluded the following question asked the Government witness, C. L. Campbell, as follows:

"Q. That was the time you were searching everybody's car in the Basin?

Mr. Badgett: We object to that.

The Court: Sustained.

Mr. Baker: Note an exception" (R. 154).

The trial court sustained exception and excluded the following question asked the Government witness, Creed Brock, as follows:

"Q. You were employed there in charge of a detail of deputy sheriffs who were guarding the Copper Company?

A. I was a deputy sheriff up there.

Mr. Frazier: We object to that, that is not material whether he was employed by the Copper Company or not.

By the Court: I don't think so, objection sustained.

Mr. Baker: We note an exception to your Honor's ruling (R. 568).

The trial court sustained exception and excluded the following question asked the Government witness, B. E. Biggs, as follows:

"Q. And the first thing you did was to put on about a hundred and fifty or two hundred special deputies was it not?

A. I put on a number of special deputies.

Q. Can you give me the highest number you had there?

Mr. Frazier: Now if your Honor please, I object to that.

The Court: Sustain the objection. I don't see where that is competent here, except it might reflect on the

creditability of these confessions, but I don't think we should have too much detail.

Mr. Baker: The Court please, we think it shows the entire situation, and think we ought to be allowed to go into it.

The Court: I don't think so. The investigation was regarding conspiracy to destroy Government property" (R. 551).

The foregoing evidence was all competent and material and vital to the issues involved. It was the theory of the defendants that the Copper Company was in league with and was paying B. E. Biggs, Sheriff of Polk County, to break the strike. That in order to break the strike several hundred men had been employed as special deputy sheriffs, and paid by the Copper Company; that these deputy sheriffs or guards patrolled the highways and searched their homes, all without warrant of law. That when the defendants were arrested they were taken by these same Company guards or deputy sheriffs to a building owned and operated by the Copper Company; that they were arrested without warrants or charges, and there abused by such guards, and that Federal Bureau of Investigation men came in and aided the Sheriff and the Copper Company; that they were placed in jail, as were many others, and held as they were so that the strike could be broken, and that after days of this sort of treatment some of them finally in utter desperation signed statements which Federal Bureau of Investigation agents and such deputies had previously prepared, on being advised that they would be released if they would sign such statements; that said statements were not true, and that the defendants or any of them had anything to do with destruction of Government property, but that the Copper Company through the sheriff and the special deputies or guards blew up the lines in order to get Government agents in and break the strike.

The trial court, in the general charge to the jury charged as follows:

> "It is in the proof, evidence of a labor dispute going on at the time of the alleged dynamiting of the towers and men were out on strike. This proof has nothing to do with the case, except in this particular. We are not concerned as to the merits or demerits as to the labor trouble between former employees of the Copper Company, and the Copper Company and these defendants, and that is admitted in proof for two reasons:
>
> First, from the Government's standpoint as showing a motive why the defendants would enter into a conspiracy to dynamite the towers; and,
>
> Second, from the defendants' standpoint of showing a reason for high pressure methods of obtaining confessions and pleas and a reason why others might have dynamited the towers and laid the blame on them" (R. 834-5).

The trial court charged the theory of defendants as follows:

> "The defendants say, however, generally that this isn't true.
>
> They say that they were on a strike at that time and that the Copper Company used drastic and high pressure methods by which to win the strike on its side, whereby they had the Sheriff's office with them in the fight and the Sheriff's office through them had employed a large number of deputies and large number of guards employed by the Copper Company and paid by the Copper Company and that very high pressure and deceitful methods were used by the Company against these defendants and others in an effort to end the strike. They say the Union was active there but it was a peaceful activity of the Union and these defendants as members thereof were there to see about the distribution of food and medicine and picketing and matters of that kind, all being peaceful and legal activities. The defendants say they never determined

the destruction of any property at any time and never entered into any conspiracy to dynamite any of the power lines and that this high pressure, deceitful method was used to obtain confessions and pleas of guilty of some of them and that they finally decided that was the best way out of it, through representations made to them by the Federal Bureau of Investigation Agents and the Sheriff. Each and all say the Government has not presented sufficient proof to show them guilty of a conspiracy.

They say it is just as reasonable to suppose the Company, through some of its agents, had the towers dynamited in order to have the Government send in their agents and lay the blame on the strikers as it was to think they did it'' (R. 837-8).

The court substantially charged the theory of the defendants correctly. However, the theory went to the jury without proof, as hereinabove set out, every effort to prove the theory was met by objection, and such objections sustained by the Court.

It was the duty of the Court to charge every reasonable matter of defense which there was evidence to support.

Bird v. *United States*, 180 U. S. 356.
Colderon v. *United States*, 279 Fed. 556.
Hoback v. *United States*, 284 Fed. 529.
Jenkins v. *United States*, 59 F. 2d 2.
Little v. *United States*, 73 F. 2d 861.

Conclusion.

It is therefore respectfully submitted that this case is one calling for exercise by this Court of its supervisory powers in order that the errors herein pointed out may be corrected; that the law may be properly and authoritatively defined and the judgment of the Circuit Court of Appeals for the Sixth Circuit be reversed to the end that justice be done to petitioners and that to such end a Writ of Cer-

tiorari should be granted and this Court review and reverse said decision.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR PETITIONERS

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Attorney for the Petitioners.

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of Counsel.

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No. 10

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES,

Petitioners,

v.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR PETITIONERS

Opinion Below.

No opinion was delivered by the trial court which sentenced the petitioners after their conviction by a jury.

The opinion of the Circuit Court of appeals affirming the judgments of conviction is reported in 124 F. (2d) 58.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered December 4, 1941 (R. 867). The petition for a writ

of certiorari was filed January 9, 1941, jurisdiction being invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and on an alleged violation of the Fifth Amendment to the Constitution of the United States. The petition was granted on April 6, 1942 (— U. S. —, 86 L. Ed. 865).

Statement

I. The Case as a Whole.

This is a criminal case which arose in the midst of a labor dispute at the mines of the Tennessee Copper Company (hereafter called the Company) situated at Copperhill in Polk County, Tennessee.

The International Union of Mine, Mill and Smelter Workers (R. 615) (hereafter called the Union), affiliated with the Congress of Industrial Organizations (R. 740), called a strike on July 14, 1939, at the Company mines in Copperhill (R. 689). The strike continued throughout the remainder of 1939, and until the offenses alleged in the indictment had taken place (R. 590), although the plant of the Company was reopened on August 28, 1939, after a large number of special deputy sheriffs had been engaged by Sheriff B. E. Biggs of Polk County (R. 550-553). During the course of the strike, petitioner Anderson, who was the national representative and organizer of the Union (R. 614), wrote to the Attorney General of the United States requesting an investigation by the latter into violations of the law against interstate transportation of strikebreakers and guards, and the violations of civil rights which were occurring in Polk County (R. 630-631). Throughout the duration of the strike, which initially involved between 500 or 600 men (R. 588), the Union conducted numerous meetings at which strike activities and relief measures for the families of the men who were out on strike were discussed

(R. 615-617), and at which some of the various petitioners, all of whom except Anderson were strikers (R. 606, 652, 670, 681, 698, 734, 735), were present. From July, 1939, until the conclusion of the strike the Union spent approximately $30,000 in the form of relief for the strikers (R. 614-615).

In the early morning hours of April 1, 1940, two power lines belonging to the Tennessee Valley Authority, a corporation in which the United States was a stockholder, were dynamited, and the service was interrupted (R. 127). On the night of April 14, 1940, two more power towers were blown down (R. 125). On April 16, 1940, Special Agents J. A. Roche and R. T. Mann, of the Federal Bureau of Investigation, arrived in Polk County, Tennessee, and began an investigation of the explosions, working together with Sheriff Biggs of that county (R. 168, 332-333). On April 22, at 3:30 a. m., Sheriff Biggs brought one Freed Long to the New York Hotel in Copperhill, where Agents Roche and Mann were staying. There, Long advised the Agents that the power lines would be blown again at 1:30 a. m. the following night (R. 466-467). No efforts were made to prevent the impending explosions, and the power lines were blown again between 1 a. m. and 2 a. m. on April 24 (R. 467, 125, 128).

Shortly thereafter, as a result of a series of conferences between Sheriff Biggs and Agents Roche and Mann, at least twenty-one of the strikers were arrested without warrants and taken to the Y.M.C.A. Building in Copperhill (R. 268, 270, 540, 556), which was owned by the Company and was at that time being used as a temporary headquarters by Sheriff Biggs, and as a barracks for the special deputy sheriffs (R. 540, 551-553, 733). On April 24 and 25, six additional Agents of the Federal Bureau of Investigation arrived in Copperhill, Polk County, to assist in the investigation (R. 168-169). As the analysis of the evidence concerning the circumstances under which the confessions were made will show, the Agents then proceeded to ques-

tion the various men in custody, doing this continually; different Agents examined the same person at various times during the same day. Virtually all of the questioning was done in the Copper Company's Y.M.C.A. Building (R. 305, 307); at all times between fifteen and twenty-five armed special deputy sheriffs were present in the building (R. 307, 553, 554). After varying periods of detention, petitioners Woodward, Simonds, Hubbard, Rhodes, Ballew and Queen made statements to the Federal Agents, all of which were subsequently repudiated.

On November 14, 1940, an indictment in one count was filed in the District Court of the United States for the Eastern District of Tennessee, charging that the eight petitioners and thirteen other persons had conspired to damage property of the Tennessee Valley Authority, a corporation in which the United States is a stockholder, in violation of Sections 35(C) and 37 of the Criminal Code, as amended, 18 U. S. C., Secs. 82, 88 (R. 2-22).

At the trial, the evidence of the Government consisted principally of the testimony of Freed Long concerning two meetings of the strikers at which the dynamiting of the power lines was allegedly discussed (R. 132-136), and of the confessions of petitioners Woodward, Hubbard, Simonds, Rhodes, Ballew and Queen, each of which implicated other petitioners. The admissibility of these confessions was challenged by the petitioners (R. 167, 775-776), who offered evidence, which is discussed in detail below, that they were made involuntarily. After conducting a preliminary investigation on the question in the absence of the jury, the trial judge rejected the contention of the petitioners and permitted the confessions to be admitted (R. 403, 775-776). After this ruling, the jury heard substantially the same testimony that was given before the judge on the preliminary inquiry. In addition, the Government offered circumstantial evidence implicating some of the petitioners. Exclusive of the confessions, there was no evidence in the record connecting petitioners Rhodes,

Ballew, and Queen with the conspiracy in any way. The trial judge refused to direct a verdict in favor of these three petitioners, as requested by their counsel (R. 579).

The petitioners thereupon offered evidence in their defense. Each petitioner who had made a statement to the Federal Bureau of Investigation repudiated its validity.[1] The testimony of Freed Long was thoroughly impeached, and evidence was offered that his reputation for truth and veracity was bad (R. 584, 585, 592, 593, 599, 775). Evidence was introduced that Long had offered to testify for the defense for the sum of $25 (R. 630, 647). All of the meetings conducted by the Union were shown to have been for ordinary strike and relief purposes (R. 614, 615, 617-619). Witnesses introduced testimony contradicting statements made in the alleged confessions of petitioners Woodward and Ballew concerning their whereabouts on particular days (R. 648-651, 766-767). The theory of the defendants, as stated in the judge's charge to the jury, was that the Company had been utilizing the office of the Sheriff of Polk County in an effort to break the strike, through the creation of an intimidating atmosphere; that the large number of guards and special deputies were employed by the Company through the Sheriff not so much for the purpose of maintaining law and order, but rather to compel a back-to-work movement; and that the destruction of Government property was carried out by persons interested in creating a diversion through which the strike could be broken (R. 837-838).

A verdict of not guilty was directed as to seven of the defendants at the end of the Government's case (R. 582). Five of the defendants were acquitted by the jury; the eight petitioners were convicted (R. 862-863).

On February 3, 1941, petitioner Anderson was sentenced to imprisonment for two years and to pay a fine of $5,000 (R. 31), petitioner Ellis to imprisonment for fifteen months and costs (R. 38), and petitioners Simonds (R. 32-33),

[1] Woodward (R. 707-712); Hubbard (R. 672-678); Simonds (R. 662-666); Rhodes (R. 740-745); Ballew (R. 759-761); Queen (R. 684-689).

Woodward (R. 33-34), Hubbard (R. 34-35), Queen (R. 35-36), Rhodes (R. 36-37), and Ballew (R. 39-40) to imprisonment for two years and to pay fines of $1,000.

The Circuit Court of Appeals affirmed the judgments of conviction (R. 867).

II. The Confessions[2]

An exposition of the circumstances under which the confessions of petitioners Woodward, Simonds, Hubbard, Rhodes, Ballew and Queen were made must include a summary of the evidence concerning the events occurring during the course of the strike until the detention of the petitioners, as well as the circumstances under which they were taken into custody, and the individual treatment accorded them. This is necessary because of the undoubted influence of the preceding events upon the state of mind of the petitioners at the time of their imprisonment and throughout the course thereof.

The strike at the mines of the Company had been in progress for over nine months when the petitioners were arrested. Throughout that period, a large number of special deputy sheriffs, who had been appointed by Sheriff Biggs shortly after the strike began, were quartered at the Company-owned Y.M.C.A. Building in Copperhill, and were engaged in maintaining law and order throughout the area in which the Company's mines were located (R. 551-553). Petitioner Anderson testified that the companionship which he had in his frequent driving trips through Polk County was necessitated by his fear of being ambushed every time he drove down the River Road (R. 620-621). Before the dynamitings, he had conferred with J. B. Frazier, United States District Attorney of the District, in reference to violations of the law in the Copper Basin, as the area in which the Company mines are located is called (R. 630). He had also written to the Attorney Gen-

[2] This part of the statement is necessarily long because the determination of whether or not the confessions were voluntary turns on a close examination of the evidence.

eral of the United States appealing for his assistance in the enforcement of the law and of civil rights in Polk County (R. 631). That the more than $30,000 expended by the Union in relief for the strikers was not adequate is indicated by the fact that some strikers had to abandon the picket line which the Union was maintaining because of lack of food (R. 617). Petitioner Anderson had arranged a conference, in order to discuss the settlement of the strike, with Dr. John R. Steelman, Director of the Conciliation Service, United States Department of Labor, on April 8, 1940, before the last two dynamitings (R. 615), and negotiations for settlement of the strike were in progress at the time the petitioners were arrested (R. 630).

With this background in mind, we turn now to the evidence as to the direct circumstances under which the six confessions were made. Some of this evidence is in sharp conflict, with the Special Agents of the F.B.I. contradicting the evidence given by the petitioners. For this reason, the testimony on this issue given by each of the six petitioners who confessed is summarized separately in some detail, and this is followed, first, by a summary of the testimony given by the Special Agents and others contradicting the petitioners, and second, by a summary of the testimony given by the Special Agents and others corroborating, supporting, or not denying the testimony of the petitioners.

Each of the eight Special Agents participated in the questioning of the petitioners to a greater or lesser degree (R. 274-441).

A. THE PETITIONERS' TESTIMONY CONCERNING THE CIRCUMSTANCES UNDER WHICH THE CONFESSIONS WERE MADE.

Hubbard: He testified that he was arrested without warrant on Wednesday evening, April 24, by Chief Deputy Sheriff Campbell and another deputy sheriff and that they took him to the Y.M.C.A. (hereafter called the Y.) and then to the County Jail (R. 200-201). He was questioned

the next morning for about three or four hours by Special Agents, the only one he could name being Roach (R. 201-202). He slept that night "in the same room occupied by a bunch of company guards", and although there was "a lot of noise going on all the time", he slept "some" (R. 202). He was next questioned the following morning, Friday, April 26, for about two hours and then he was taken back to the Y. (R. 202-203). He was questioned there the same afternoon for "two or three or four hours" and then was taken to the City Jail (R. 203).

Hubbard testified that he spent that night in a cell about seven by nine with three other prisoners, that one of these was a "drunk", that the bunks in the cell were not large enough for two men, and that he slept on the floor (R. 203-204). He might have had a blanket and there was also heat in the jail (R. 203-204).

The next morning, April 27, at about 9 o'clock, some deputy sheriffs took him back to the Y. Hubbard testified that "I was questioned continuously from the time I went there until 4:30 or 5 in the afternoon" (R. 204). The questioning was done by more than one Agent. "Two would come in and stay an hour or hour and a half and they would go out and two others would come in" (R. 204). During the questioning he was seated in a straight back chair at the side of a table, and "I was pushed up straight when I would lean towards the table" (R. 204-205). One of the Special Agents, whom he was unable to name, took away his glasses, which he must wear all the time (R. 204-205). He became "awfully sick" in the late afternoon, but a doctor failed to come until after dark even though he had asked for one about noon; "I think they gave me an aspirin and told me I didn't need a doctor" (R. 205). During the course of this examination, he was called a "damn liar" continuously and the Agents kept telling him they knew the truth (R. 205-206).

Hubbard testified that he could not drink the coffee at the City Jail; there seemed to be something wrong with

it, and he had a headache "almost from the second day on" (R. 206). He did not get anything to eat the night he slept at the City Jail and the next morning he got "two dry sandwiches of some meat, bologna" (R. 207). On Saturday, when he was questioned all day, he had no lunch but "I don't believe I asked for anything to eat" (R. 207). He asked for water and failed to get some until he became ill (R. 207); he started to roll a cigarette several times but "they wouldn't let me roll it" (R. 207). Hubbard also testified that all during this examination he was told that if he would talk he would get a "nice meal" and a drink of water; that "they would go and ask the Judge to be light on me"; that bond would be set at $1,000 (R. 207-208).

At some time during the questioning of Hubbard, he asked for a lawyer; but Special Agent Plaxico said there were no charges against him and he did not need a lawyer (R. 208). His family did not know where he was and he saw no one from the outside from the time he was taken into custody on April 24 until he was arraigned on April 30 (R. 208-209), except Dr. Hyde, who attended him on April 27.

Hubbard also testified that during the course of these various questionings at the Y., the deputies who were quartered there were continuously circulating around the building and that when the door was open they would look in and laugh and sneer (R. 209).

Hubbard claimed that during the period of his questioning he lost about twenty pounds in weight (R. 209).

On cross-examination, Hubbard was able to identify most of the Agents who participated in the incidents to which he had testified on direct examination (R. 210-213). He admitted that he had asked to spend the night at the City Jail instead of at the Y. (R. 215), but on redirect examination he explained that he preferred the disagreeableness of the City Jail to being quartered with his enemies, the deputy sheriffs who had for months been intimidating and interfering with the strikers (R. 216).

Simonds: Simonds testified that he was arrested by Chief Deputy Campbell and another deputy sheriff on Wednesday, April 24, at about 3 o'clock in the afternoon and was taken to the Y. (R. 324). "There were a lot of guards there and deputy sheriffs and F.B.I. agents, they said" (R. 224). He was questioned by Mann and another Agent for about an hour and three-quarters that afternoon and spent the night in the City Jail (R. 224-225). Felton Woodward "and maybe someone else" was in the cell (R. 225). The cell was about seven by nine and had only two bunks; part of the time he slept in a bunk, the rest of the time "I set up in a chair and leaned back" (R. 225). He got nothing to eat the first night and a cold sausage or bologna sandwich in the morning (R. 225-226). The coffee was satisfactory for the first three meals but thereafter he could not drink it (R. 226).

Simonds went on to testify that on the first day, after he had been taken to the City Jail, he was then taken back to the Y. at about 7 o'clock and again questioned "two hours or more" before he was put in the Jail again (R. 226). The next day he was questioned on two occasions, once some time during the day and the other time "close to midnight", on both occasions for about the same time—"from one to two hours" (R. 227); after the first occasion, he was taken back to the Jail and was awakened to be taken back to the Y. for the second questioning (R. 227). He had a bologna sandwich both for lunch and supper (R. 227).

The next morning, April 26, he had another bologna sandwich for breakfast and about half the coffee which was served to him; he could not drink the rest, it had "a sickening taste", it made him sick (R. 228). He was questioned again that day for an hour or more (R. 229).

On the "second day"—which would be April 25—he asked for a lawyer, and Special Agent Roach said, "You got awful damned smart since you have spent one night in jail" (R. 229-230). This was after the Agents had told him it was his "last chance", that "they would not be back any more, and it would be too bad for me" (R. 229). He saw no one

except the F.B.I. Agents and the deputies from April 24, when he was arrested, until April 30, when he was arraigned (R. 230).

Simonds testified that there were a "good many" company guards in the Y. while he was being questioned; when the door was open, they would look in as they passed and laugh; "they usually had short guns" (R. 230).

Simonds also testified that promises were made to him; Special Agent Plaxico "did most of that" (R. 230); Plaxico "said he had a lot of influence with the Judge down at Chattanooga, and if I would come along and make a statement probably he could get me out for six months, it might be a year, and he might get me out on parole and I wouldn't have to serve any time" (R. 230-231). Plaxico also said that "if I didn't make a statement I would get fifteen years, he said the limit was thirty-five years on my case" (R. 231). Plaxico also said that he might get him out on a $1,000 bond (R. 231).

Simonds claimed that he was often called "a damn liar", and that "one time Mann was standing in front of me, he walked up close to my face, slung his hand back and said, 'you are a God damn lying son-of-a-bitch' "—showing his holster with the gesture (R. 231). The Agents "often" told him they knew the truth, would say "we don't want to hear that any more", and would say, "—you are going to talk" (R. 231-232).

Simonds testified that he weighed 191 pounds before his arrest and about 152 or 155 pounds at the time of his arraignment (R. 232).

On cross-examination, Simonds testified that Special Agents Mann and Roach questioned him on both occasions on April 24, the first day of his arrest (R. 234-235). On the first occasion, Sheriff Biggs came in before the questioning was finished "and cut me off pretty short" (R. 235). On this same occasion, the Agents said "they had the goods on me" (R. 235). "They said to me that I was not telling the truth" (R. 235).

Simonds also testified that when he was questioned the evening of the second day, April 25, it was "around 9 or 10 o'clock" and not "close to midnight" (R. 236-237). On cross-examination, Simonds also named the Agents involved in the incidents he had testified to on direct examination (R. 237-240).

Woodward: Woodward testified that he was arrested about noon on Wednesday, April 24, without warrant by Chief Deputy Campbell and another deputy who told him that it was not an arrest; they just wanted to take him and talk to him "a little bit" and be right back (R. 247). He was taken to the Y. for about three or four hours, and, without being questioned, to the City Jail (R. 247-248). He was not sure whether Hubbard was there, but he believed Simonds was (R. 248). He had nothing to eat that night (R. 248).

The next day, Woodward got a cold bologna sandwich and coffee for breakfast, two bologna sandwiches for lunch, and stayed in the Jail until Chief Deputy Campbell or one of the guards took him to the Y. at about 8 or 9 o'clock in the evening (R. 248-249). Without having anything to eat that night, he was questioned by Mann, another Special Agent, and Sheriff Biggs for three or four hours (R. 248-249)—until "around midnight" (R. 250).

That night, April 25, Woodward stayed in the Jail with three others and he "didn't do much sleeping" because there were only two cots (R. 250). The next morning he had a bologna sandwich for breakfast, and coffee which made him nervous and gave him a headache (R. 250-251). That afternoon, April 26, he was taken to the Y. for three or four hours of questioning by Roach and another Agent, which finished about 11 o'clock (R. 251-252). He was in the Jail again that night with three others and slept "just off and on" (R. 252). The next morning he had bologna again and stayed in the Jail until he was questioned again that night (R. 252). The following day, Sunday, the 28th, he spent in the Jail with nothing to eat (R. 252-253). He

signed the confession on Monday, April 29, at 11 or 12 o'clock at night (R. 253).

Woodward testified that Special Agent Mann cursed him (R. 253-254), and also called him "a God damn liar and son of a bitch" (R. 254). The Agents kept telling him they knew the truth, and that "they had come in there to break that strike—that they intended to break it before they left" (R. 254).

On cross-examination, Woodward reiterated that the Agents had said that they were going to break the strike, and that "we are not after you, we are after Mr. Anderson" (R. 255). He also identified the Agents involved in the incidents he had related on direct examination, and Plaxico as the Agent who had said they were in to break the strike (R. 258-259); he further identified Agent Morgan as having said "they had a place in Atlanta that would make me talk" (R. 260).

On redirect, Woodward testified that his bond had been fixed at $1,000, and that on Sunday night, April 28 (he signed his statement on April 29), Agent Plaxico had said he would fix the bond at $500 or $1,000 (R. 260-261). He also testified that Plaxico had promised to take care of a local felonious assault case in which he was involved (R. 263).

Queen: Queen testified that he was taken into custody by two deputies on Sunday afternoon, April 28; the deputies had no warrant, told him the F.B.I. wanted to talk to him, and took him to the Y. (R. 681-682). At the time, he and his wife were discussing the question of getting a doctor for their baby, who was in a very serious condition with bronchial pneumonia (R. 682). There were deputies and "some strange men" at the Y. (R. 682). He spent that night in the City Jail; he and Rhodes were put in the same cell at the same time, and Hubbard, Woodward, and Simonds were put in later (R. 682). There was sleeping space for two only, so "I didn't sleep any Sunday night"; two of the men were on the two cots, one on a

chair, the other two on the floor (R. 682). He had no discussion with Hubbard, Woodward, and Simonds "about getting our stories together" (R. 682). Queen had nothing to eat that night (R. 682-683).

Queen was questioned by Agents Mann and McCabe [3] on Monday evening at about eight or eight-thirty and he "did sign some kind of paper" (R. 682-683). "I didn't know what was in the paper, and didn't get the agents to read it. I signed the paper because the F.B.I. men, Mr. Mann and Mr. McCabe was there and after they got through talking with me they got up and turned their backs and McCabe wheeled around and said sign this right here. I guess you are in a hurry to get back to your wife and baby. He said, 'I guess you are in a hurry to get back to your wife and baby' and I did want to get back to them. I hadn't heard from her during the time I had been down there and didn't know whether she got a doctor for the baby or not" (R. 683). He pleaded guilty because Mann had told him that if he did he would be released and could go back home (R. 683).

Rhodes: Rhodes testified that he had lost weight since taken into custody (R. 733). He was arrested on Sunday, April 28, at about 8 o'clock in the evening by Chief Deputy Campbell and was taken to the Y. for about ten minutes before he was taken to the City Jail (R. 734). He spent the night in the same cell with Queen, Hubbard, Simonds, and Woodward; two slept on the cots, the other three on the floor (R. 734).

At about 10 o'clock on Monday morning, the 29th, a deputy took him to the Y. where he was questioned by Agents Whitten and Lunsford for an hour and a half or two hours (R. 734). Whitten took the statement on a typewriter (R. 734). (On cross-examination, Rhodes said that it was Lunsford who was at the typewriter [R. 739].)

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[3] The written confession itself, however, shows that Hevron was also present (R. 518, 521).

Rhodes told them he was innocent, they said they knew everything, and when he continued to protest his innocence Lunsford called him a "damn liar" (R. 734). He testified that he had not told the Agents many things which were contained in the confession; that in fact he had denied them and the Agents kept insisting that he was lying (R. 734-736); "I imagine I was called a liar fifteen or twenty times or maybe more than that" (R. 736). After an hour and a half or two hours "Mr. Lunsford got the paper out of the typewriter and brought it over to me and told me to sign it". Rhodes stated:

> "The best I remember he told me sign this and they would take care of me and said they didn't have me charged with anything, and said he had the story that I was implicated in the dynamiting and they told me to sign that and they would see that I got out of it, it wouldn't cost me anything and I would be turned loose. They said I probably would have to come to Chattanooga in the next day or two and said they would see some official, but I don't remember who the official was, but they told me one or the other, to plead guilty and that the official would take care of me, would see that I was taken care of. They told me to plead guilty when I got before this official, whoever he was, and they said they would call the official before we got down there, or would be down there at the time and would arrange for a small bond and anybody could sign the bond. He said there were two classes of defendants, and if I didn't plead guilty I would be classed with Anderson, I would be in Anderson's class and sent to the penitentiary for several years. He didn't state how many and he said if I did what he said I would be turned loose and go back to my family" (R. 736-737).

Rhodes testified that he pleaded guilty "because the men said to and I thought I had to" (R. 737).

> "I signed the statement because they told me to sign it, I was in the custody of these men and had been there sometime and couldn't see a lawyer or anybody. Neither Mr. Lunsford or Whitten informed me that I didn't have to do it, they didn't tell me I didn't have

to do the things they told me to do. I was never in court before. They didn't tell me the statement would be used against me in court and I didn't read the statement, was not given an opportunity to read it and nobody read it to me. I do not know what Mr. Lunsford was writing while Mr. Whitten was talking. If Mr. Lunsford had written what I told Mr. Whitten there would not have been anything in that statement that implicated me in any dynamiting" (R. 737-738).

On cross-examination, Rhodes added that during his questioning by Whitten and Lunsford others would come in now and then; Plaxico was one of these (R. 738). He reiterated that he did not know what was in his confession when he signed it (R. 738-739), and again denied that he had made many of the statements contained in it (R. 740-741).

Ballew: Ballew testified that he was taken into custody on Tuesday, April 30, at about three in the afternoon (R. 746). The arrest was made at his cousin's farm in North Carolina (where he was living) by Special Agents Lunsford and Whitten and a deputy sheriff, who forcibly took him into Tennessee (R. 747). When they got into Tenessee, Whitten snapped handcuffs on him and said, "God damn you, you will talk" (R. 747). He was taken to the Y., where Chief Deputy Campbell questioned him, telling him, in the words of Ballew:

"come on Robert, tell them what they want to know, said we have not got anything against you or anybody else, said Anderson is the son-of-a-bitch we want. I wouldn't say any FBI men were present when Roxie Campbell made that statement. He said he was not satisfied with coming in here and getting you boys out of a job, he wants to get you in the penitentiary. I said I don't know anything Roxie and he said don't tell me that, I have been a friend of yours, and I said you never did act as a friend, you even had parties guard us while we slept. That was before I talked to the FBI. They had been guarding us when we slept and

that is what caused me to go to the country and far, we couldn't step out of the house without being arrested and stopped on the highway" (R. 748).

Then Lunsford and Whitten questioned him from about 4 o'clock until 6 and he told them he knew nothing (R. 748). He specifically denied making many of the statements in his confession (R. 749-752). After Lunsford and Whitten talked to him on the afternoon of the 30th, they turned him over to a deputy who took him to the City Jail (R. 752). At about 11:30 o'clock that night he was removed to the Hamilton County Jail at Chattanooga "and stayed in jail all night in first one cell and another * * *" (R. 752). The next morning Whitten and Lunsford came for him and

"they said do you want to go back home and I said I woud like to. They said all right we will go to the court house and you can get ready to go home and they brought me to this building here and took me to one of the rooms in yonder, I wouldn't say which one, and I stayed there and they went out and stayed a while, and said we will be back in a few minutes. I just sat there and Whitten and Lunsford went out of the room a few minutes, I would say, probably five minutes, and came back and had a stack of papers, looked like one of those yellow papers and said they wanted me to go home and said we will release you if you sign your name here. I wouldn't be positive they told me how to sign it, they said sign your name here and you can go home. I knew I was not pleading guilty to anything and didn't know anything and hadn't been in any kind of trouble or anything and I had been there all day and night and there hadn't been any charges against me and they said we will let you go home, said sign this and we will be ready to go and I signed it. They didn't read it to me and I didn't know what was in it or what it contained. They said sign this and held it out to me and as quick as I sign it they started out of the room and the Marshal with two negroes handcuffed came in and got me and handcuffed me with them and took me back to the Hamilton County jail" (R. 752-753).

On cross-examination, Ballew testified that when he asked Lunsford for a warrant the latter said "I am a Federal Officer and he showed me a badge and said let's go, I don't need any warrant" (R. 754). He also stated that

> "nobody cussed me out and I was not abused or threatened and they gave me to understand they wasn't after anyone but Anderson, that he was the man they were after. Whitten and Lunsford both told me that at Copperhill, and I also talked to Roxie Campbell. Whitten and Lunsford were the only agents I talked to and they told me that they were not after me at all, that Anderson was the damn man they wanted and they didn't say Mr. Anderson. They didn't cuss me" (R. 758).

He again denied making many of the specific statements contained in his confession (R. 761). He thought that he was signing "some kind of order I had to sign to get my release" (R. 761).

B. Testimony of the special agents and others contradicting testimony of the petitioners.

The Agents testified that several of the petitioners said that they had been treated "very well and had very good food" (R. 188; see also R. 189, 196, 292). They also testified that they did not call the men "liar" or "damn liar" in so many words (R. 186, 276-277, 278, 282, 292, 295, 299, 349, 360, 372, 389, 801, 809). The Agents also denied that they had cursed the petitioners or had used profanity in questioning them (R. 276, 280-281, 299, 324-325, 346, 360, 372, 386, 820); and that they had engaged in intimidation or violence or threats of physical violence (R. 277, 280-281, 292, 324, 325, 346, 360, 369, 371, 386, 388, 390); or that they had made promises or threats concerning size of bonds, length of sentences, parole, or other pains or rewards (R. 176-177, 274, 277, 280, 281, 287, 290-291, 295-296, 317, 327, 330, 337, 347, 359, 361, 369, 371-372, 373, 386, 388, 390, 396, 518, 523, 524, 801, 809-810, 821). Sheriff Biggs and four

of his deputies testified that the prisoners had the same meals at the Y. and at the Jail, as the deputies, and that when they slept at the Y. they slept in the beds the deputies had been using (R. 554, 567, 568, 569, 570). This evidence served to contradict similar testimony of some or all of the petitioners.

As to Hubbard specifically, it was testified that he wore his glasses during questioning and that they were not taken away from him (R. 183, 299, 324, 346, 359, 368, 387); that he was permitted to smoke (R. 299, 324, 325, 345-346, 359-360, 369, 385); that he was not denied water (R. 325, 360, 368, 385);[4] that after he had asked for a lawyer he immediately changed his mind because, he said, he had done no wrong (R. 346-347, 352). With respect to Hubbard's illness on Saturday, April 27, and his failure to get a doctor for many hours after he had asked for one (R. 205), the Agents testified that they gave him an aspirin for a headache after he rejected their offer to call a doctor (R. 370-371, 392-393).

As to Simonds, who had testified that when he asked for a lawyer on Thursday, April 25, Special Agent Roach had commented, "you got awful damned smart since you have spent one night in jail" (R. 229, 230), the Agents testified that on no occasion did Simonds ask for a lawyer (R. 175, 290-291, 327, 359, 368, 372, 388), and Roach specifically denied before the jury that Simonds' charge was true (R. 788).

As to Woodward, who had testified that the Agents had said that "they had come in there to break that strike—that they intended to break it before they left" (R. 254) and that they were not interested in him but in M. C. Anderson (R. 255), the Agents testified that they made no state-

[4] It is interesting to note that none of the four Agents who testified on this point specifically said that Hubbard did in fact have water. Mann said that he did not remember Hubbard asking for water (R. 325); Lunsford answered "No" to the question, "Mr. Lunsford did you ever deprive this man of water?" (R. 360); Whitten was asked, "Did you ever deny him drinking water, if he asked for it?" and answered, "No, sir" (R. 368); Morgan answered in the negative when asked, "Did you deny him water?" (R. 385).

ments to him along such lines and that in fact they were not concerned with the strike but with the violation of Federal law (R. 280, 295, 330, 349, 389-390). Agent Mann testified that at the time Woodward made his confession "he was advised of his rights, he was told he didn't have to make a statement and whatever he said would be used against him in court or could be used against him in court" (R. 445).

As to Queen specifically, the Agents testified that Queen was told that he did not have to make a statement unless he wanted to but that he was in fact anxious to make a statement (R. 517-518, 523), and that he was not told that if he signed, he could get home to his sick baby (R. 794, 820-821).

As to Ballew specifically, Agents Lunsford and Whitten testified that Ballew was not arrested when they and a deputy found him in North Carolina and taken by force into Tennessee, but that he went along with them of his own free will (R. 801-802, 810-811); that they felt it would be more satisfactory to interview him in Copperhill instead of at his cousin's farm in Tennessee (R. 805, 814-815); that they did not put handcuffs on Ballew (R. 802, 811) and say to him, "now, damn you, you will talk" (R. 802); that he was not told they were after M. C. Anderson and not him (R. 813); that Ballew apparently did not mind staying in Copperhill (R. 806-807, 817), even though the Agents offered to take him home (R. 539); that he was not told that he could go home if he signed the statement (R. 803); that he was not told he was signing a release (R. 803); and that he read his statement before he signed it (R. 813).

As to Rhodes specifically, Agent Lunsford testified that Rhodes was told he did not have to give the statement unless he wanted to and that the statement would be used against him (R. 524).

C. TESTIMONY OF THE SPECIAL AGENTS AND OTHERS CORROBORATING, SUPPORTING, OR NOT DENYING TESTIMONY OF THE PETITIONERS.

This testimony falls into several different categories. Each will be treated separately.

1. *Illegal arrests and detention without arraignment.*

Only the merest pretense was made by the Agents in their testimony that the six petitioners who confessed were legally arrested. This pretense is illustrated by Roach's testimony that, "As I understand it, the Sheriff of Polk County arrested him (Simonds) on a charge of the State—arrested quite a few of them, and asked us to interview them in reference to various dynamiting (sic)" (R. 172-173). It is also illustrated by the testimony of Plaxico, Special Agent in Charge (R. 316, 320), that Sheriff Biggs had told him that "he had some kind of local charge against them" (R. 304). Even though Plaxico did not order the men arrested and even though Plaxico insisted they were in the custody of the Sheriff (R. 304), Plaxico always found the men available for questioning when he wanted them and was apparently satisfied they would continue to be available; after he questioned men at the Y. (R. 304-305) he "left them right there" (R. 305). In fact, whatever the Agents wanted done about the men Sheriff Biggs did (see e.g., R. 196).

Sheriff Biggs testified that it was he who ordered the arrests of all of the twenty-one original defendants on "State charges" (R. 540, 542). He had no warrants for the six confessing petitioners (R. 546). Although he had secured a mittimus to hold them for investigation, he knew that the men could not be held "on a warrant or anything else more than seventy-two hours" without a preliminary hearing (R. 549-550).

Although some effort was made by the Agents to convince the jury that Ballew came with them voluntarily from North Carolina into Tennessee (R. 801-802, 810-817),

and remained voluntarily at the Y, after the questioning on April 30 (R. 816-817), this is inconsistent with the Sheriff's testimony that he ordered Ballew arrested (R. 542). In fact, Agent Whitten testified that he, Lunsford, and the deputy sheriff who was with them (R. 810) had no charges or warrant against Ballew and went to North Carolina to question him, not to arrest him (R. 814): Mrs. Edna Carter, Ballew's cousin at whose house in North Carolina he was picked up, supported his testimony about the forcible arrest (R. 764-768).

The arrests of all six petitioners who confessed were therefore illegal. As to detention without arraignment, it is not denied that Hubbard, Simonds, and Woodward were held from Wednesday, April 24, until arraignment before a United States Commissioner on Tuesday, April 30 (Government's Memorandum on the Petition for a Writ of Certiorari, 31) and that this was illegal (id., 32).

2. *Lengthy and persistent questioning.*

Even if we accept the testimony of the Agents at face value, and even allowing for the difficulty of remembering precise dates and exact length of each period of questioning (this testimony coincides closely with that given by the petitioners), it is clear that Hubbard, Simonds, and Woodward at least were subjected to frequent and lengthy periods of questioning on the five days from their arrest on Wednesday, April 24, until they confessed verbally on Sunday, April 28.

Hubbard was questioned for two hours on the afternoon of April 25 by Special Agents Roach, Plaxico, Mann, and Hevron (R. 181, 296-297, 309, 322-323, 345, 351). Plaxico testified that he was "positive" that Sheriff Biggs "sat in there for a while" (R. 309). Hubbard was again questioned that evening by Roach and Plaxico for two hours (R. 174-175) or perhaps from one and a half to two hours (R. 282-283).

On April 26, Special Agents Morgan and McCabe interrogated Hubbard on and off for five, ten, or fifteen minutes at a time from about five to six-thirty in the afternoon (R. 384, 391). About an hour later, from seven-thirty to nine-thirty, Hubbard was again questioned, this time by Special Agents Lunsford and Whitten (R. 358-359, 362-363, 367, 374-376).

Hubbard testified that it was on Saturday, April 27, that he was questioned continuously for most of the day (R. 204). The testimony of the Special Agents, while leaving some gaps, supports Hubbard's claim. Thus Plaxico testified that he questioned Hubbard for about half an hour at about 11 o'clock that morning (R. 313). Roach testified that he and Plaxico questioned Hubbard at about 2 or 3 o'clock in the afternoon, for what period he did not say (R. 182). Plaxico further testified that he interrogated Hubbard again at about 6 o'clock for about fifteen or twenty minutes (R. 314). The testimony of Special Agent Morgan about the questioning of Hubbard on April 27 is particularly interesting. He stated that he started to talk to Hubbard at the Y, "around two, it was in the morning, I believe"; that he talked to him then for ten or fifteen minutes, or more; that he left and then returned. He had difficulty in saying how many times he talked to him, it may have been two or three times—"We talked to so many people it is difficult to say"; however, when he was asked whether he talked to Hubbard all day, his answer was, "Intermittently, I would say, yes"; the last time was late in the afternoon (R. 392). Morgan was not sure whether Special Agent McCabe was with him when he questioned Hubbard on April 27 (R. 385, 393).

On Sunday, April 28, Hubbard was present while Roach and Plaxico questioned Simonds for about forty-five minutes to an hour, at the end of which time Simonds confessed (R. 274-275). Thereupon Hubbard also made an oral confession (R. 275). Agent Mann came in later and asked one or two questions (R. 323). The questioning of

Simonds and Hubbard—and Woodward, who came in later—lasted from about five o'clock until seven thirty or forty-five (R. 285), or perhaps until eight or nine (R. 188). Biggs and some of his deputies were also present at some time during the period (R. 196). Hubbard's statement was reduced to writing as he retold his story on April 30 in about an hour and a half or two hours (R. 364-365); it was taken by Agents Hunsford and Whitten (R. 364-365, 374-379, 501).

Thus, in Hubbard's case it appears from the testimony of the Special Agents themselves that he was questioned on four consecutive days. On April 25 he was questioned for about four hours during two different periods, one in the evening, for a total of about three and a half hours. On April 27 he *was* subjected to questioning for most of the day—on and off throughout the day by Agent Morgan, probably accompanied by Agent McCabe; at about 11 o'clock for about half an hour by Plaxico; at 2 or 3 o'clock by Roach and Plaxico; and by Plaxico at about 6 o'clock. On April 28 he was questioned part of the period of two and a half or two and three-quarter hours with Simonds present at first and Woodward later, and with two of the Agents present at first and a third later.

In evaluating this testimony, and the testimony of the Special Agents concerning the other petitioners, Special Agent Roach's statement concerning the practice of returning to the same prisoner during the same day should be borne in mind:

> "We may have interviewed Ed Simonds or Earl Hubbard, or any individual, for a couple of hours, in the morning, and then in the afternoon some one else might have been talking to another man and got some information in reference to Simonds and Hubbard and then we would go in and interview Hubbard or Simonds and find out what they said" (R. 186).

And that more than one Agent questioned the same prisoner at the same time is indicated not only by the testimony con-

cerning specific interviews, but also by Special Agent Morgan's comment, "We usually work two together" (R. 393).

On Thursday, April 25, according to the testimony of the Agents, Simonds was interrogated by Plaxico for an hour or a little longer in the morning (R. 315). Roach, Plaxico, and Mann then questioned him for two hours from 2 to 4 o'clock in the afternoon and for two more hours that evening, from about 7 to 9 o'clock (R. 172, 173-174, 279, 289, 311, 326, 336). On April 26, he was questioned by the same trio for about an hour in the morning (R. 311-312). On Saturday, April 27, Simonds was questioned by Plaxico for a short time in the afternoon (R. 315), and by Morgan for about twenty-five or thirty minutes late in the afternoon (R. 387). On Sunday, April 28, he was questioned by Roach and Plaxico for about an hour before he confessed (R. 274-275, 289). As set forth above, pp. 23-24, the questioning of Simonds and Hubbard—and Woodward, who came in later—took about two and a half or two and three-quarter hours (R. 285), or perhaps longer (R. 188).

That other Agents questioned Simonds and that there was at least one other occasion on which he was questioned is indicated by the testimony of Agents Roach and Whitten. Roach testified that Simonds was "probably" questioned by other Agents in addition to Mann, Plaxico, and himself—although he refused to state definitely that he was questioned by other Agents (R. 286). Morgan questioned him (R. 387), and Whitten also testified that he questioned Simonds when the latter was present during the interrogation of Ballew (R. 367, 372). However, the length of time and other details concerning this further questioning are not indicated in the record.

In Simonds' case, therefore, it also appears from the testimony of the Special Agents that the questioning was excessive. On April 25 he was questioned for three different periods—morning, afternoon and evening—for a total of five hours or longer, with one Agent doing the question-

ing alone in the morning and with three Agents conducting the examinations in the afternoon and evening. The same three Agents questioned him for about an hour the next day, and one of them for a short period the day after that, April 27. On April 27, also, a fourth Agent questioned Simonds. On Sunday, April 28, he was interrogated for about an hour before he confessed and for some time thereafter. He was questioned by at least one other Agent on at least one further occasion.

Turning to Woodward, he was also questioned by Roach on April 25 for two hours in the afternoon and for two hours in the evening (R. 187, 279, 436). Hevron testified that he questioned Woodward for an hour and a half on that day, and that Mann was present, but Hevron did not fix the time of day (R. 348). Mann also testified that he questioned Woodward for an hour and a half on that day but he neither fixed the time nor said who was with him (R. 328). Although Roach testified that Mann questioned Woodward with him on the 25th (R. 279) (without making clear whether on one or both of the occasions on which Woodward was questioned that day), we think it is fair to conclude from the incomplete testimony of Roach, Mann and Hevron that Woodward was questioned by Mann and Hevron on April 25 on an occasion distinct from the two on which Roach questioned him. This conclusion seems justified from the coincidence in the testimony of Mann and Hevron that the questioning by them lasted an hour and a half, as distinct from Roach's statements that the questioning lasted two hours on both occasions in which he participated. This conclusion is also more consistent with Woodward's testimony (R. 255).

Agent Morgan also testified that he questioned Woodward on two occasions, one of them being on April 27 (R. 388-389, 397). The questioning lasted ten or fifteen minutes the first time, with "several agents" present; and a little longer the second time, with Roach and Plaxico probably present (R. 389). Plaxico also testified that he questioned Woodward on about two or three occasions, but

he could not remember the dates; however, the questioning by him never lasted over half an hour (R. 294).

Plaxico did not make clear whether the two or three occasions included the occasion on Sunday, April 28, when Simonds signed his written statement and Hubbard and Woodward confessed orally (R. 293-294). As set forth above, pp. 23-24, Woodward was brought in on April 28 after Simonds and Hubbard had made oral confessions (R. 187-188, 194-195, 274-276, 293-294, 328). The questioning of all three men took from about two and a half to two and three-quarter hours, or perhaps longer (R. 188, 285). Roach and Plaxico started the questioning (R. 274-275, 293, 297), and Mann joined the group later (R. 323, 328). Woodward's written statement was taken the next day, the 29th, by McCabe, Hevron and Mann (R. 187, 294, 328-329, 445). Mann testified that Woodward

> "had considerable difficulty in recalling the details, he said his mind was not exactly clear on all of it, it took a good while in order to get the details of it, of how it happened, everything in the chronological order of events, and he also complained on occasions that his mind was befuddled in making the statement, upon relating about what he had done, and that is the reason it took so long to do it. It took the morning and the greater part of the afternoon" (R. 329).

He also stated that Woodward

> "would state facts and then want to change them and rather than want to change it or erase it I indulged him a long period of time and waited. Sometimes he would sit five minutes meditating over what we asked him" (R. 343).

To sum up on the questioning of Woodward, he was interrogated for two sessions of two hours each on April 25, and probably during a third session lasting an hour and a half. He was questioned again on April 27, and on April 28 when he confessed. There were also at least two additional occasions, dates not specified, on which Agents Mann and Plaxico, separately, interrogated him.

Coming to Queen, Rhodes and Ballew, there is no significant discrepancy between their testimony relative to the times and periods of their questioning, and the testimony of the respective Agents who questioned them—Mann (R. 517-522, 820) and McCabe (R. 523, 794) in Queen's case; Lunsford (R. 524-526, 801) and Whitten (R. 809-810) in Rhodes' case, and in Ballew's case (Lunsford R. 526-533, 801-808; Whitten, R. 810-817). Queen was questioned and made his statement on Monday evening, April 29, the day after he was arrested; the period of questioning lasted from 9 to 10 o'clock, according to Mann (R. 522), but according to Queen, started at about eight or eight-thirty (R. 682-683). Rhodes, according to his testimony, was questioned an hour and a half or two hours on Monday morning, the 29th, the day after he was arrested (R. 734); the Agents did not testify as to the length of the questioning. Ballew was questioned for two hours at the Y. in Copperhill by the two Agents on April 30, the day he was arrested (R. 748), and in the Federal Building in Chattanooga on May 1, when he confessed (R. 526-533, 752-753, 801-808, 810-817).

3. *Failure of men to see lawyers, friends or relatives, before arraignment.*

The Government specifically admits that Hubbard, Simonds and Woodward saw no one "from the outside" from the time of their arrest on April 24 until after their arraignment on April 30 (Government's Memorandum on the Petition for a Writ of Certiorari, 32). No claim is made that Queen, Rhodes and Ballew saw anyone from the outside during the period from their arrest until their arraignment. Queen and Rhodes were arrested on April 28, and confessed on April 29; Ballew was arrested on April 30, and confessed on May 1. It is not clear from the record when these men were arraigned.

There is no evidence that any of the prisoners saw or could see anyone from the outside before they confessed.

There is in fact positive evidence that no one could see them. Sid Howell, Woodward's father-in-law, testified that on Thursday, April 25, the day after Woodward was arrested, he went to the Y. in Copperhill to see him but was told by two deputies whom he named that they had orders "from the F.B.I. men for no one to see him" (R. 642), and that when he tried again on Friday, Deputy Sheriff Brock said "that they had him under arrest and that no one was allowed to see him at all, that they was questioning him * * *" (R. 642-643). On Saturday, however, he talked to some of the prisoners, including Woodward, through a peep-hole, but he could not see any of them (R. 643). Sheriff Biggs admitted that he refused to permit "one or two men that kept coming there" to see the men (R. 554), and that "I tried my best to keep outsiders that was not interested out" (R. 554). Although he said, "I didn't refuse to let Sid Howell see Felton Woodward", he also stated that "he possibly was not allowed to see him while he was being talked to by me or some of my officers" (R. 555). Chief Deputy Campbell admitted that he refused to permit Townsend and Hunt, counsel for the men, to see them in Copperhill two or three days before they were taken to Chattanooga (R. 271-272); he said that he "would rather they would see the Sheriff" (R. 271). The record is barren as to whether or not they saw the sheriff. And although Special Agent Roach claimed that he sent for Mrs. Simonds on Sunday, April 28, he admitted that this was after Simonds had made his statement on that day (R. 178-179).

The testimony of E. B. Baker, Robert C. Hunt and J. M. C. Townsend, counsel for the men, that they and relatives of the men had difficulty in securing access to the prisoners for some days after the original arraignment on April 30 (R. 643-646, 768-772, 772-774) was not seriously disputed by the Government. Baker testified that he was unable to see all the prisoners together until May 6, the day of the preliminary hearing (R. 645-646). Dodson, the jailer, at

the Hamilton County Jail in Chattanooga, testified that when the men were brought in on April 30 he was given orders not to let them see anyone, but to permit the lawyers to see them one at a time (R. 266); after two or three days, he was ordered to permit immediate relatives to see the prisoners (R. 266).

Baker's testimony that he had difficulty in seeing the men at the arraignment was supported by that of United States Commissioner James H. Anderson, who committed the men. Anderson testified that he had seen Baker outside of the room, and when the Sheriff of Hamilton County announced that nobody could come in except the prisoners and the officers, he, Anderson, stated that the prisoners were entitled to counsel and directed that Baker be admitted (R. 219).

This summary does not, of course, include the specific testimony from the petitioners that their requests to see a lawyer were denied, since this testimony was controverted by the Agents.

4. *Inducements in the form of low bail bonds and parole.*

As set forth above, the petitioners testified that various rewards and inducements were held out to them if they confessed. The Agents denied that they had made any promises or inducements.

Among other things, the petitioners claimed that offers of favorable treatment in the shape of low bail bonds were made to them. Thus, Hubbard testified that the Agents promised that bond would be set at $1,000 (R. 208); Simonds testified that Special Agent in Charge Plaxico promised to get him a $1,000 bond and that Chief Deputy Sheriff Roxie Compbell brought a bond for that amount to Mrs. Simonds to be signed (R. 231); and Woodward testified that Plaxico promised to secure a bond for him in the amount of $500 or $1,000 (R. 260-261).

The petitioners' testimony with reference to the bonds was supported by an important witness, United States

Commissioner Anderson, who committed the prisoners (R. 217). Anderson testified that at the arraignment Special Agent Mann requested that bond be fixed at $3,000 in some of the cases, and at $1,000 in others (R. 217-218); he did not remember in which cases Mann asked for $1,000 bonds (R. 217-218). Anderson disregarded Mann's recommendation at the arraignment, but his records, which he had with him on the witness stand, showed the following notation for May 3, 1940:

> "May 3, 1940, Clyde Hoffman, brought before me by Marshal Ricketts, and at the request of Mr. Mann, Agent, the bond of Felton Woodward was reduced from $3,000 to $1,000 and on this date said Woodward executed bond for $1,000 for appearance before me on May 6, 1940, with Ben F. Presswood of Ducktown, Tennessee, as surety" (R. 218).

Anderson thought that Plaxico was present at the arraignment when Mann made his recommendation (R. 221).

It is true that Mann denied that he had made any recommendations about bonds (R. 338). However, Commissioner Anderson's written and contemporaneous record would seem to be conclusive; and if none of the Agents made any recommendations on the size of the bonds, there is nothing in the record, in Anderson's testimony or elsewhere, to explain why Woodward's bond was fixed at $1,000 instead of at $3,000 or more as in the other cases (R. 218).

Commissioner Anderson's testimony is corroborated by that of E. B. Baker, counsel for the defendants. Baker testified that he saw Agent Mann in the hearing room and that

> "he had a little book in his hand and had the names of all the defendants written on a book and he got this book out and recommended to Commissioner Anderson that all the defendants with the exception of five be placed under $3,000 bonds and the others under $1,000 bonds. Felton Woodward and Ed Simonds were two of the men that he wanted placed under $1,000 bond" (R. 644).

The petitioners also claimed that the Agents made promises to secure parole for them. Simonds testified that Plaxico said

> "he had a lot of influence with the Judge down at Chattanooga, and if I would come along and make a statement probably he could get me out for six months, it might be a year, and he might get me out on parole and I wouldn't have to serve any time" (R. 230-231).

Woodward testified that Plaxico told him that if he made a statement Plaxico "would see I was paroled" (R. 261); and while Hubbard did not say that he was promised parole in so many words, he did claim that the Agents told him that if he made a statement "they would go and ask the Judge to be light on me" (R. 208).

Although the Agents denied that any promises concerning parole had been made to the men, significant corroboration came from Chief Deputy Sheriff Roxie Campbell (R. 272-273). Campbell testified that he heard Plaxico tell Woodward that he would secure a parole for Woodward if he made a statement; that he, Plaxico, would be glad to make such a recommendation to the Court (R. 272). However, Campbell was not sure whether this was before or after Woodward's statement had been taken (R. 272). Campbell also testified that he might have told the men (without specifying which ones) that Plaxico had influence with the Court, "that these Federal men can probably do what they say they can" (R. 272). Plaxico told him, Campbell, that "he would be glad to recommend a parole for the boys that come clean" (R. 272). He repeated this to "four or five in jail that night" (R. 273).

The Government has argued that Campbell's testimony as to what he told the men in custody does not help the petitioners "because it was not shown that he made the statement to any man in custody before the confessions had been signed" (Government's Memorandum on the Petition for a Writ of Certiorari, 35). Since Plaxico's statement was that he would recommend a parole "for the boys

that come clean", and since Campbell repeated the statement that night, necessarily Campbell repeated the statements before the men had "come clean".

Plaxico claimed that he did not "authorize" Campbell to tell Woodward that he, Plaxico, would recommend parole if Woodward made a statement (R. 318). He claimed that the only statement he made to Campbell in connection with leniency for the men was made after the men had confessed, on the morning that the United States Marshal came to Copperhill to take the men into custody (R. 318). At that time Campbell told him

> "he would regard it as a personal favor if Woodward, Earl Hubbard and Ed Simonds, if these men pleaded guilty, if we could do anything for them on account of their families, I told Roxie Campbell at that time it was my experience when a man did enter a plea of guilty, the only thing the investigating officials could do would be to tell the facts, and we are bound to apprize the Commissioner of the facts whether good or bad, I told him that was our duty, that is what we were supposed to do" (R. 318).

Campbell's testimony, however, is too specific to be lightly dismissed.

5. *Intimidating Surroundings.*

This case arose after several hundred men had been on strike for more than nine months (R. 588). In August, 1939—one month after the strike began and eight months before the dynamitings and arrests in April, 1940—Sheriff Biggs and his deputies had established headquarters at the Y.M.C.A. in Copperhill, which belonged to the Company (R. 550-552).

According to Sheriff Biggs, "I established headquarters there to be able to enforce the law and keep out any trouble" (R. 551). According to the strikers, however, the function of Biggs and his deputies resembled more the traditional function of a sheriff and his deputies in the course of a strike in an isolated community. Hubbard

testified that practically all of the deputies were strangers to him, and that for a period of months, at all hours of the day and night, they had intimidated the strikers, searched their houses and cars, "and so on" (R. 216). Ballew claimed that he went to Mrs. Carter's home in North Carolina to live because "we couldn't step out of the house without being arrested and stopped on the highway" (R. 748). Petitioner Anderson, the national representative of the Union (R. 614), claimed that his wife rode around with him for protection (R. 631). Of much greater significance, however, is Anderson's testimony of his persistent efforts to have the Attorney General of the United States and the United States Attorney for the District (who later prosecuted this very case) investigate the violations of Federal law involved in the interference with the rights of the strikers:

> "I had before these dynamitings conferred with J. B. Frazier, United States District Attorney of this District in reference to certain law violations in the Copper Basin. The last conference I had with him as I recall was on April 23, 1940. On that occasion I was trying to get General Frazier to send Federal Bureau of Investigation men into the Copper Basin to investigate these violations of the law. I wanted him to investigate violations of the law against interstate transportation of strike breakers and guards. Prior to that time I had had other correspondence with the Attorney General of the United States and appealed to him for assistance in reference to the same matter, in reference to the violation of the civil rights in the Copper Basin. I received this letter from the office of the Attorney General of the United States in reply to the correspondence and I will file this as Exhibit No. 1" (R. 630-631).

It is important to note that Anderson's last conference with the United States Attorney took place on April 23, 1940. The dynamiting which led to arrests in the case took place that night (R. 128).

The Government made no effort to controvert this testimony of the petitioners about the intimidation during the

course of the strike, and about the efforts of the strikers to secure the protection of the Government.[5]

It was therefore to be expected that when the dynamitings took place only strikers should be suspected and arrested; Special Agent Roach testified that Sheriff Biggs arrested only strikers (R. 194), and that the Agents questioned only the persons in Biggs' custody (R. 191). Roach and Plaxico testified that Biggs attended the organization meeting of the Special Agents when they came on the scene (R. 169-170, 334).

With this background, we come to the situation in which the men found themselves during the periods of questioning by the Special Agents. To begin with, Sheriff Biggs testified that the first place the men were taken to upon their arrest was to the Y.M.C.A., his headquarters (R. 540, 552). Then, when the men were questioned, it was at the Y. (R. 170, 307); as to this, there is no dispute (Government's Memorandum on the Petition for a Writ of Certiorari, 10). The prisoners also ate and slept at the Y., except for those occasions when they ate and slept at the County Jail or at the City Jail (R. 541, 552, 554, 566-570).

Biggs testified that at the time he had 15 to 25 deputies (R. 553), and that they were armed at all times (R. 554). Thus, when the petitioners ate, slept and were being questioned they were constantly surrounded by a large group of armed men whom they had necessarily come to regard as their enemies. Special Agent Mann acknowledged that Biggs was present on most occasions when the men were being questioned (see, also, Roach, R. 196; Plaxico, R. 309).

[5] The poignancy of this testimony is heightened by the uncontradicted evidence concerning the pathetic situation of the strikers and their families. Union minutes showed that men were "quitting picket lines because of not getting enough to eat" (R. 617), and that the strikers were exhorted to "cut wood for something in the line of relief" (R. 617). The leaders tried "to get the school, the Ducktown school, to give those children out there something to eat, instead of a bowl of soup * * *" (R. 624); they wondered "how we were going to take $100 or $200 and divide it amongst 200 or 300 people and their dependents" (R. 627).

6. *Physical Mistreatment.*

When the prisoners did not eat or sleep at the Y., they ate and slept at the County Jail or at the City Jail. In the cases of Hubbard, Simonds and Woodward the Government acknowledges that on two nights each of them was crowded into one small cell at the City Jail with three or more others (Government's Memorandum on the Petition for a Writ of Certiorari, 31).[6]

In fact, the testimony of the petitioners as to conditions at the City Jail is uncontradicted. Hubbard testified that when he spent the night of April 26 in the Jail, there were three others in the cell, one of them an intoxicated person, and that, because there were bunks for two only, he slept on the floor (R. 203-204). (It was on the following day that Hubbard was subjected to his day-long interrogation.) Hubbard and Simonds agreed in their testimony that the cell was about seven by nine (R. 203, 225). Simonds, testifying to conditions in the cell on the night of April 24, said that Woodward "and maybe someone else" was in the cell, and that part of the time he slept in a bunk and the rest of the time, "I set up in a chair and leaned back" (R. 225). Woodward testified that on one of the nights he spent in the Jail, the night of April 25, he did not do much sleeping because there were only two cots for four men (R. 250). Woodward also testified that on the night of April 26, there were three others in the cell and that he slept "just off and on" (R. 252). Queen testified that he spent Sunday night, the 28th, in the same cell with Rhodes, Hubbard, Woodward and Simonds, and that he did not have any sleep; two of the five men slept on the two cots, two on the floor, and one sat in a chair (R. 682). Rhodes' testimony about the night in this cell was similar (R. 734). Queen and Rhodes confessed the next day (R. 522, 524).

[6] In the memorandum, however, the statement is also made that one of the two nights was after they had confessed (33). No record citation is given for the statement, and in fact the testimony of Hubbard that he spent one night in the County Jail (R. 208) and one night, April 26, in the City Jail (R. 203), of Simonds that he spent two nights in the City Jail (R. 225, 227), and of Woodward that he spent three nights in the City Jail (R. 248, 250, 252)—all before the oral confessions on April 27—is not contradicted.

Ballew did not spend a full night at the City Jail. After spending the early part of the evening of April 30 in the Jail, he was removed at about 11:30 to the Hamilton County Jail at Chattanooga, spent from about 12:30 to about 4 a. m. in one cell there, and was then put in another cell (R. 752, 755). He confessed the next morning (R. 526). This testimony was also not contradicted.

The evidence further demonstrates that the petitioners were mistreated in other ways and that they suffered as a consequence. The testimony of four of the six petitioners who confessed that they were given nothing to eat on the first night of their arrest, even though they were arrested during the day, was not controverted (Hubbard, R. 200-201, 207; Simonds, R. 224, 225; Woodward, R. 247-248; Queen, R. 681-682). Dr. H. P. Hyde, who treated Hubbard on April 27, testified that while Hubbard had only an ordinary cold, "he seemed to be depressed and sick" (R. 199). "His condition was depressed and he was nervous—" (R. 566). The testimony of Robert Dale, the bookkeeper at the Hamilton County Jail who registered the prisoners there on April 30, tended to support the testimony of Hubbard, Simonds and Woodward that they lost weight seriously between April 24, when they were arrested, and April 30, when they were committed. Hubbard testified that he lost about 20 pounds, from 185 or 187 to 167 (R. 209); Dale's records showed that Hubbard weighed 169 on April 30 (R. 241). Simonds testified that he went down from 191 pounds to 152 or 155 (R. 232); Dale's records showed that Simonds weighed 165 on April 30 (R. 241).[7] Woodward testified that his normal weight was 165 to 170, that he could not have weighed less than 165 pounds on April 24 (R. 265); Dale's records showed that he weighed 155 on April 30 (R. 241).

7. *Other Corroborative Testimony.*

While the Special Agents testified that they did not call the petitioners "liar", it is obvious from their tes-

[7] Special Agent Roach testified that on April 29, Simonds told him his weight was 170 (R. 278).

timony that they refused to believe what the prisoners were saying—and made that clear to the prisoners—until the men would admit their guilt or give information which coincided with that which the Agents believed to be true. Special Agent Roach testified that after the Agents would check up with Mrs. Simonds on alibis Simonds had given, he would return and tell Simonds that "one was lying, he or his wife" (R. 184); and that when Simonds would make a statement that he, Roach, did not believe, he would say, "Now Ed, it does not fit into the facts we have developed so far—what the others have told us" (R. 185). This testimony coincided with what Simonds claimed—that the Agents would tell him they knew the truth, that when he started to answer the Agents would say, "hush, we don't want to hear that any more" (R. 231-232). The testimony of Hubbard and Woodward also coincided with that of Roach—that the Agents told them they knew the truth (R. 206, 254).

The other Agents gave similar testimony. Plaxico testified that the Agents would keep confronting Simonds with the information they developed and that if Simonds still insisted the information was incorrect, he, Plaxico, would insist upon its validity (R. 291-292, 321-322). Mann told Hubbard "he was not telling the truth" the first time he questioned him (R. 324). He, too, testified that they kept confronting the prisoners with the results of the investigation they made of the prisoners' original stories (R. 328). Mann also testified that when one of the men made a contradictory statement he would tell him that it was not true, that he did not want that kind of proof, and that he, Mann, knew what the truth was. Hevron testified that when he and Mann took Woodward's statement on April 29 they kept refreshing Woodward's recollection with the confidential information which they had (R. 355). Hevron also testified that when Hubbard told him something which did not check with his information, he would say that Hubbard was not telling the truth and that he, Hevron, knew it (R. 356-357). Morgan's testimony was along the same lines.

He would tell the prisoners that he knew the truth, and would reject their statements if they did not coincide (R. 398); he told them that "I would rather not hear it that way * * *" (R. 388, 389). In fact, Morgan admitted that "substantially" he would tell the men that they were lying (R. 399).

Finally, the testimony of two defendants who did not confess as to their treatment by the Agents is generally similar to the testimony given by the six petitioners who did confess. Ben Cross, who was picked up in Georgia on April 28, testified that he was questioned by Lunsford and another agent on April 29 from about 8:00 a. m. until between 3:00 and 4:00 p. m. (R. 242, 243). Lunsford called him "liar", "damn liar" and "son of a bitch" (R. 243). Lunsford told him "they had a perfect right to kill me and leave me in the dark" (R. 244). The Agents would not permit him to go to the bathroom and he wet his clothes (R. 245-246). The trial court directed a verdict of not guilty as to Cross (R. 582).

Petitioner Anderson, who did not confess, testified that Agent Roach kept cursing him and calling him a liar (R. 626), that Plaxico said, "damn you we have ways to make you talk" (R. 626-627).

Questions Presented

1. Whether the confessions of petitioners Hubbard, Simonds, Woodward, Queen, Rhodes, and Ballew were voluntarily made, and were admissible in evidence against them.[9]

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[8] Two questions presented in the petition for writ of certiorari are not urged here: (1) Whether error was committed in the refusal of the trial judge to admit certain evidence on the examination and cross-examination of witnesses; (2) Whether there was sufficient evidence to support the conviction of petitioners Anderson and Ellis (Petition for Writ of Certiorari, p. 3).

[9] The question of the effect of the erroneous admission of any one of the confessions on the right of the several petitioners to a new trial, which is part of the general question concerning the admissibility of the confessions, is separately numbered here.

2. Whether the erroneous admission of any one of the confessions constituted prejudicial error to the other petitioners.

3. Whether petitioners Queen, Rhodes, and Ballew could be convicted in the absence of any proof, other than their confessions, of their participation in the alleged conspiracy.

ARGUMENT

I

The confessions of petitioners Hubbard, Simonds, Woodward, Queen, Rhodes, and Ballew were involuntarily made, and were not admissible in evidence against them.

A.

This Court said recently that

> "when * * * the question is properly raised as to whether a defendant has been denied the due process of law guaranteed by the Federal Constitution, we cannot be precluded by the verdict of a jury from determining whether the circumstances under which the confession was made were such that its admission in evidence amounts to a denial of due process". (*Ward* v. *Texas*, 86 L. Ed. 1101, 1103.)

There is no dispute that the question is properly raised in this case.

In *Ward's* case, also, this Court summarized the grounds upon which it has set aside convictions in cases of this character:

> "This Court has set aside convictions based upon confessions extorted from ignorant persons who have been subjected to persistent and protracted questioning, or who have been threatened with mob violence, or who have been unlawfully held incommunicado without

advice of friends or counsel, or who have been taken at night to lonely or isolated places for questioning" (id., at 1105).

The Court went on to say that any one of these grounds would be sufficient cause for reversal (id., at 1105-1106).

In *Lisenba* v. *California*, 86 L. Ed. 179, the Court phrased the principles in somewhat similar words:

> "We have not hesitated to set aside convictions based in whole, or in substantial part, upon confessions extorted in graver circumstances. These were secured by protracted and repeated questioning of ignorant and untutored persons in whose minds the power of the officers was greatly magnified; who sensed the adverse sentiment of the community and the danger of mob violence; who had been held incommunicado, without the advice of friends or of counsel; some of whom had been taken by officers at night from the prison into dark and lonely places for questioning" (id., at 190).

Even though there be eliminated from consideration every factual issue on which the evidence is in conflict, we have in this case every ground—or a parallel ground—which the Court has thus stated as justifying a reversal. In addition, here there is inducement, *Bram* v. *United States*, 168 U. S. 532, an issue which the Court in the *Lisenba* case put to one side as having been determined, on conflicting evidence, by the finding below (86 L. Ed. 179, at 190); and here there is physical mistreatment, an issue which the Court held resolved, for the same reason, in the *Lisenba* case (id., at 190) and in the *Ward* case (86 L. Ed. 1101, at 1104).

Taking each issue in the order set forth in the *Ward* case, we come first to "persistent and protracted questioning". In that case, the crime was committed on a Sunday. Without being arrested, the petitioner was questioned the same day with several others and then released. Later that day and on the following day, the petitioner was

questioned several times. He was not actually taken into custody until Tuesday evening, when he was taken to a jail in an adjoining county. The following night, Wednesday, he was taken to another jail in another county. A police officer visited him from time to time, and on Thursday morning delivered him to two highway patrolmen in a third county. The same morning the patrolmen turned him over to the sheriff of still another county. "During this time he had been questioned continuously" (86 L. Ed. 1101, at 1103). After the sheriff to whom he had been finally turned over talked to the petitioner on Thursday, the latter signed a confession.

Although in this recital it is stated that Ward was questioned "continuously" from Tuesday night to Thursday morning, it may be assumed that on the facts such questioning was not continuous in the sense that there was no respite; the fact that Ward was moved about as much as he was indicates this.

On the basis of the facts set forth in the opinion in the *Ward* case, it is impossible to conclude that the questioning of Ward was less persistent and less protracted than the questioning of Hubbard, Simonds and Woodward in this case. Hubbard was questioned on four consecutive days, from April 25 to April 28, on three of those days for more than one period, and on one of those days, April 27, for most of the day by different Agents (supra, pp. 23-24). Simonds was questioned on three different periods on April 25, by three Agents on April 26, and during two periods on April 27. He was also questioned on April 28 (supra, pp. 25-26). Woodward was questioned during three different periods on April 25, and at least once on April 27 and April 28; he was questioned on at least two other occasions (supra, pp. 26-27). The parallel with *Ward's* case is indeed a close one. Another parallel will be found in *Chambers* v. *Florida*, 309 U. S. 227, where five days of intermittent questioning culminated in an all night examination (id., at 239).

Although the questioning in the cases of Queen, Rhodes and Ballew was considerably less persistent than it was in the case of the other three men, the Agents did question them beyond the point at which they could be expected to make statements which were voluntary in the real sense of the word.

Lisenba v. *California*, supra, is not authority to the contrary. There the petitioner was interrogated on April 19, 20, and 21, three consecutive days; then, on May 2, after a lapse of eleven days, he was again questioned and confessed after several periods of questioning, the final one lasting about eight hours. In that case, the Court stated that the lawless practices of the police, including the lengthy questioning, "took them close to the line" (id., at 191). The two dissenting Justices were of the opinion that those practices took them over the line.

It is submitted that on any basis of comparison the questioning of Hubbard, Simonds and Woodward in this case was much more persistent and protracted, when viewed as a whole, than the questioning of the petitioner in the *Lisenba* case.

It must also be borne in mind in the consideration of this entire case that the six persons who confessed here were uneducated workers, living in an isolated community, whose spirit had already been worn down by a bitter and losing strike which had lasted nine months at the time of the questioning. The protection which this Court was so alert to throw about the petitioners in *Ward's* case and in *Chamber's* case is fully as appropriate here.

The threat of mob violence, the second ground stated in *Ward's* case, was not, of course, present in this case. There was, however, a threat—a constant threat—which, in its own way, was just as efficacious in producing fear and wearing down resistance in these petitioners as the threat of mob violence in the case of Ward. The headquarters used by the F.B.I. for the purpose of interrogating the petitioners was also the Company-owned headquarters of the petitioners' most hated and feared enemies—Sheriff Biggs

and his deputies. It is impossible to think of a place which the Special Agents could have chosen for the questioning which was more calculated to induce the petitioners to desire the ordeal to come to an end than the place which was actually chosen. There, at the Y.M.C.A., the petitioners ate and slept with the men who had been intimidating them for months, with the men who had the special task of wearing them down. The effect of these surroundings is nowhere shown more clearly than in Hubbard's testimony that he preferred to go without sleep in the City Jail than to be quartered with such men (R. 216).

It is disingenuous to argue, as the Government has, that the deputies did not participate in the questioning of the petitioners (Memorandum on the Petition for a Writ of Certiorari, 33).[10] It would be just as valid to argue that, before a confession is ruled out as inadmissible on the ground that there were threats of mob violence, it must be shown that members of a mob must have questioned a prisoner. To argue this is to overlook the enormous psychological pressure which must have been exerted on the petitioners by virtue of living at such close quarters with their armed enemies.

The third ground justifying reversal, as set forth in *Ward's* case, is illegal detention, without advice of friends or counsel. In this case, there is no pretense that any of the six petitioners were legally arrested or that holding them without arraignment was legitimate. In *Lisenba v. California*, supra, this Court condemned in the severest terms the State officers who engaged in such practices, but was reluctant to find that the confession was thereby

[10] Even this argument collapses when note is taken of Sheriff Biggs' significant admission that he did question the prisoners. When Biggs was explaining on the stand why Sid Howell, Woodward's father-in-law, may not have been able to see the latter, he said, "he possibly was not allowed to see him while he was being talked to by me or some of my officers" (R. 555). The Government argues, on the one hand, that the men "were held by the sheriff on his own initiative" (Memorandum on the Petition for a Writ of Certiorari, 31, n. 21), and on the other, that "the deputies did not participate in the questioning" (id., at 33). Since the sheriff and not the F.B.I. held the men, and since the F.B.I. and not the sheriff asked the questions, are they each chargeable with the acts of the other?

coerced. As we read *Ward's* case, the Court has now taken the further step. In that case the Court held that the illegal arrest and the failure to arraign were in themselves sufficient to warrant the exclusion of the confession.

Moreover, there can be no question that none of the petitioners who confessed saw lawyer, friend, or relative from the time he was taken prisoner until the time he confessed. The testimony of the petitioners that their requests for counsel were refused, and the opposing testimony of the Special Agents that no such requests were made, is beside the point. There is no indication in *Chambers* v. *Florida*, supra, or *Ward* v. *Texas*, supra, that the petitioners requested the benefit of counsel. The Government should not be permitted to argue that cases such as these should turn on the extent to which untutored victims of lawless officials comprehend their essential rights. If fundamental rights are to have any meaning, an objective test must be applied —did the petitioners have the benefit of counsel? No interference with proper law enforcement methods is invited by such a test.

In any event, the evidence clearly discloses that no one from the outside could have seen any of the petitioners if he had wanted to. The testimony of Sid Howell, Woodward's father-in-law, that he was turned away by deputies on two different occasions is uncontradicted; Sheriff Biggs admitted that he kept "outsiders" away (R. 554), and that he was unwilling to have the questioning of the petitioners interfered with (R. 555). The fact is that in this case counsel and relatives had difficulty in seeing the petitioners even after the arraignment.

The next ground for reversal stated in *Ward's* case is the attainment of the confession by taking the prisoner "to lonely and isolated places for questioning" (86 L. Ed. 1101, at 1105). This precise element is not present in this case, but here again the parallel is supplied by the fact that the petitioners were questioned at the headquarters of Sheriff Biggs and his deputies. This Court has excluded confes-

sions secured upon questioning in lonely and isolated places only because questioning in such surroundings obviously induces fear and breaks down resistance. It has already been demonstrated that questioning at the headquarters of Sheriff Biggs was more likely to produce such consequences with these petitioners than questioning under any other surroundings.

We come now to additional elements not present in the *Lisenba* and *Ward* cases but present here. The Government has conceded that Chief Deputy Sheriff Campbell told "four or five" of the prisoners that Special Agent in Charge Plaxico had said he would "recommend a parole for those boys that come clean" (R. 273; Government's Memorandum on the Petition for Writ of Certiorari, 35). The Government insists, however, that it was not shown that the statement was repeated to the petitioners before the confessions had been signed (id.). As we have shown, however (supra, pp. 32-33), Campbell repeated the statement before the men had confessed.

A further significant inducement is shown by the evidence. This was the promise of favorable treatment in the form of low bail bonds (supra, pp. 30-31). The Government concedes that Commissioner Anderson's disinterested testimony on this issue is persuasive (Government's Supplemental Memorandum on the Petition for Writ of Certiorari, 5).

Physical mistreatment, also an issue put aside in the *Lisenba* and *Ward* cases, was present here. No effort was made at the trial to rebut the testimony as to conditions at the City Jail, where Hubbard spent one night, Simonds two nights, and Woodward three nights, before they confessed. Queen and Rhodes spent their only night before they confessed in the City Jail, and Ballew spent his only night before he confessed being shuttled by his captors between the City Jail and two different cells in the Hamilton County Jail at Chattanooga.

On the issue of physical mistreatment the testimony of four of the petitioners that they were given nothing to eat the first night they were held may not loom large. But even this testimony is highlighted by the callous comments of Special Agent Roach about Simonds that "I was not interested in whether he had anything to eat", "he was not in my custody" (R. 174), "I didn't care whether he had anything to eat" (R. 429).[11] The evidence fairly shows that the petitioners lost weight substantially under the strain of the questioning (supra, p. 37).

Finally, there is the evidence that the Agents continued to question the prisoners until they told stories which harmonized with the situation as the Agents had constructed it (supra, pp. 37-39). Even though the Agents denied that they used the term "liar" when they rejected answers given by the petitioners, it is obvious that the effect of the approach taken by the Agents was the same. This form of coercion certainly contributed to the collapse of the self-possession of the prisoners.

B.

The cases cited by the Circuit Court of Appeals (124 F. [2d] 58, 67-68) are not in point. To say that a confession made to police officers while in their custody and in answer to their questions is voluntary (*Pierce* v. *United States*, 160 U. S. 355; *Hardy* v. *United States*, 186 U. S. 224; *United States* v. *Tod*, 263 U. S. 149; *Perovich* v. *United States*, 205 U. S. 86), merely brings us to the threshold of the fundamental issue in this case.

[11] This testimony of Special Agent Roach, peripheral though it is, demonstrates perhaps more than anything else in the record the novel method employed by the Special Agents of the F.B.I., whereby they divested themselves of responsibility for the petitioners while leaving themselves free to question them without restraint. Even though the Agents rushed to the scene to investigate a crime against Federal property, they made no pretense of arresting any suspects or conducting an independent investigation. The record makes it clear that the Federal Agents relied completely on Sheriff Biggs even though they were investigating a Federal crime (see, e.g., Roach, R. 172-173). The Government cannot disclaim responsibility by saying that the men "were held by the sheriff on his own initiative" (Memorandum on the Petition for a Writ of Certiorari, 31 n. 21; see, also, supra, p. 44, n. 10).

C.

It is unfortunate that a case raising the constitutional validity of some of the law enforcement methods employed by certain Agents of the Federal Bureau of Investigation should come before the Court at a time when it is more essential than ever to maintain the purity of the law enforcement method of the Federal Government. If the people are to be united in their struggle against the greatest enemy the Bill of Rights has ever had, they must have the conviction that the Bill of Rights remains intact to be defended. It is doubly unfortunate that such an issue should arise in a case growing out of a labor dispute.

This Court, it is respectfully urged, should continue the inspiring tradition established in those cases decided in recent years—of which *Ward's* case is the latest landmark—that it will not tolerate such lawless practices of law enforcement officials as are disclosed by this record, that such practices are worthy only of our enemies. This is a case which will bear repetition by this Court of what it said in *Chambers* v. *Florida*, supra:

> "We are not impressed by the argument that law enforcement methods such as those under review are necessary to uphold our laws. The Constitution proscribes such lawless means irrespective of the end. And this argument flouts the basic principle that all people must stand on an equality before the bar of justice in every American court. Today, as in ages past, we are not without tragic proof that the exalted power of some governments to punish manufactured crime dictatorially is the handmaid of tyranny. Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement. Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death. No higher duty, no more solemn responsibility, rests upon this Court,

than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution—of whatever race, creed or persuasion" (309 U. S. 227, at 240-241).

II

The erroneous admission of any one of the confessions constituted prejudicial error to all other petitioners implicated by such confession.

In *Glasser* v. *United States*, 315 U. S. 60, this Court stated "* * * where error as to one defendant in a conspiracy case requires that a new trial be granted him, the rights of his co-defendants to a new trial depend upon whether that error prejudiced them." *Dufour* v. *United States*, 37 App. D. C. 497, which was one of the cases cited by the Court in support of the above-stated rule, held, under the circumstances there involved, that the granting of a new trial to one of the defendants did not entitle his co-defendant to a new trial. In the course of its opinion the court stated:

> "Had a new trial been awarded Huston upon the ground of error in the admission of evidence, and that evidence had also related to the other defendants and had been in any manner to their prejudice, all the defendants would necessarily have been entitled to a new trial" (37 App. D. C. 497, 510).

The facts presented here fall squarely within the circumstances under which the Court of Appeals of the District of Columbia has stated it will direct a new trial for the co-defendants in a prosecution for conspiracy. Each confession involved here related to the other petitioners and implicated them. Although the confessions were introduced with the names of the alleged co-conspirators deleted, such deletions were rendered meaningless by the

inclusion of the names of the alleged co-conspirators when the confessions were read into the record during the cross-examination of the petitioners. Thus, Woodward's confession as read into the record, and denied by him on his cross-examination, implicated Anderson, Ellis, Simonds, Hubbard, Rhodes and Queen in the alleged conspiracy (R. 707-712). In a similar manner, Hubbard's confession implicated Anderson, Simonds and Woodward (R. 672-678); Simond's confession implicated Anderson, Woodward, Rhodes, Queen and Ballew (R. 662-666); Rhodes' confession implicated Woodward, Simonds and Queen (R. 740-745); Queen's confession implicated Woodward, Simonds, Ballew and Rhodes (R. 684-689); and Ballew's confession implicated Simonds and Queen (R. 759-761). In a more general manner, each confession strengthened the proof aliunde concerning the existence of a conspiracy among the defendants. To what extent each confession occasioned inferences in the minds of the jurors concerning the guilt of the other petitioners can not be determined, of course. That each confession did cause some inferences, which would not have been present otherwise, and that this prejudiced the other defendants, no reasonable man, after an examination of the record, would deny. It follows, therefore, under the rule laid down in *Dufour* v. *United States*, supra, that the erroneous admission of any one confession constituted error at the least to those petitioners directly implicated by such confession, and more correctly, because of the real possibility of prejudice to the others, to all of the other petitioners.

The fact that the trial court instructed the jury that no extra-judicial statements of defendants implicating co-defendants could be binding on such co-defendants made the various individual confessions admitted no less prejudicial to all the other petitioners. Such an instruction is required by law when a concededly *admissible* confession of one co-conspirator is introduced in evidence at the trial of several conspirators. That the instruction does not re-

move the prejudicial effect of the evidence on the other co-defendants has been recognized by the courts. "A statement by one of several co-defendants which is in the nature of a confession is admissible in evidence under proper instructions, although such a statement may indirectly influence the minds of the jury against the other defendants on trial. The mere fact that evidence legally admissible against one of several defendants may prejudice his co-defendant, is no reason for its exclusion." *Commonwealth* v. *Berman*, 181 A. 244, 249. See, also, *Cochran* v. *United* States, 41 F. (2d) 193, 206 (C. C. A. 8).

Consequently, although the confessions here could not be excluded solely on the ground that they prejudiced the other defendants, the fact that they were prejudicial to them, as shown above, remains. When it is established that it was error to admit any one of these confessions against the defendant making it, then its prejudicial effect on the other defendants is wholly unjustified by the requirement that the jury be permitted to consider all admissible evidence, and thus constitutes reversible error as to them.

III

The lack of corroboration of the confessions of Queen, Rhodes, and Ballew rendered their conviction erroneous as a matter of law.

The court below recognized in its opinion that there was no evidence in the record connecting petitioners Queen, Rhodes, and Ballew with the charge laid in the indictment other than their respective confessions, which had been repudiated. 124 F. (2d) 58, 64. It also recognized the rule, representing the great weight of authority in the United States, that there can be no conviction of an accused in a criminal case upon an uncorroborated confession. 124 F. (2d) 65. Nevertheless, it held that the trial court did not err in refusing to direct a verdict of not guilty as to

these three petitioners, basing its decision on the ground that the evidence aliunde in the record of the mere existence of the conspiracy was sufficient corroboration of the confessions as a matter of law. It is our contention that neither in authority nor in policy was the Circuit Court warranted in its ruling.

No previous case has held that a confession *alone* is sufficient to prove participation in a crime once it has been proved that the crime was committed. The cases cited by the Circuit Court of Appeals in support of its holding that the evidence in the record of the mere existence of the conspiracy was sufficient corroboration of the three confessions in question do not permit of such interpretation. In *Rosenfeld* v. *United States*, 202 F. 469 (C. C. A. 7), *Berryman* v. *United States*, 259 F. 208 (C. C. A. 6), *Wiggins* v. *United States*, 64 F. (2d) 950 (C. C. A. 9), *Pearlman* v. *United States*, 10 F. (2d) 460 (C. C. A. 9), and *Litkofsky* v. *United States*, 9 F. (2d) 877 (C. C. A. 2), the issue involved was the sufficiency of the evidence independent of the confessions to corroborate the latter, there being present in each case independent evidence of the defendant's connection with the crime charged. Only in *Ryan* v. *United States*, 99 F. (2d) 864 (C. C. A. 8), was the question of proof of the defendant's connection with the crime by independent evidence directly at issue, and there the decision affirming the conviction was based on the presence of such evidence in the record.

Further, there is no compulsion in the other decisions involving the corroboration of confessions for a holding that a confession alone is sufficient proof of a defendant's connection with the crime charged. *Vinkemulder* v. *United States*, 64 F. (2d) 535 (C. C. A. 5), certiorari denied, 290 U. S. 666, involved a conviction for illegally transporting alcoholic beverages in interstate commerce. The defendant, who, according to independent evidence, had flown a plane on an interstate journey, in which liquor had been found, contended that his confession that the liquor had

been in the plane during the entire journey was inadmissible. The court ruled otherwise. Here, the admissibility of the confession was involved, and the court permitted its admission in order to resolve any doubt in the minds of the jurors as to defendant's transportation of the liquor, for which inference there was substantial independent evidence.

In *United States* v. *Marcus*, 53 Fed. 784, error dismissed *Marcus* v. *United States*, 159 U. S. 259, the question also raised was the *admissibility* of the defendant's confession that he had passed a counterfeit bill. There was substantial independent evidence in the record to warrant an inference that the bill had been passed by the defendant.

In *Murray* v. *United States*, 288 Fed. 1008 (App. D. C.), certiorari denied 262 U. S. 757, the error presented was the refusal of the trial court to charge that the defendant's confession could not be considered by the jury unless independent evidence of the defendant's commission of the crime had established the defendant's guilt beyond a reasonable doubt. The appellate court held the refusal proper, and correctly did so. The case, however, in no way upheld the proposition that a confession alone is sufficient to prove defendant's participation in the crime, and there was, in the record of the case a substantial amount of independent evidence warranting an inference of such connection.

Thus, it can be stated that there is no express holding in the cases which supports the ruling of the Circuit Court of Appeals. The question then arises whether such a ruling is implied by the previous cases. At first glance, it would so seem. The courts have stated the requirements of corroboration in these cases in terms of the *corpus delicti*, *i. e.*, independent proof of the *corpus delicti* has been held to constitute sufficient corroboration of a confession to warrant a conviction. The courts have also stated in several cases that the identity of the accused is not a part of the *corpus delicti*. *Vinkemulder* v. *United States*, supra: *United States* v. *Marcus*, supra: *Murray* v.

United States, supra. It would thus seem that mere proof of the existence of the criminal conspiracy here was proof of the *corpus delicti*, and satisfied the requirement of corroboration, and that the absence of *any* independent evidence connecting these petitioners with the conspiracy here involved was immaterial. It is our contention, however, that such an inference is completely unwarranted on two grounds.

In the first place, it has been recognized that the identity of the accused may properly be a part of the *corpus delicti* which must be proved by independent evidence. In *Forte* v. *United States*, 94 F. (2d) 236 (App. D. C.), the crime charged was the transportation in interstate commerce of a stolen car, with knowledge that it was stolen. In its discussion of the requirement of corroboration, the Court stated:

> "The 'corpus delicti' does not properly include, as a third element, the agency of the accused as the criminal. This would make the term synonymous with the whole of the charge, and such a definition has been repudiated. It would require, in view of the corroboration rule, that the whole of the charge, including the criminal agency of the accused be evidenced independently of the confession. It is to be noted, however, that in certain types of crimes involving scienter on the part of the accused it is not possible to separate, either conceptually or practically—that is in respect of the proof—the scienter, as an element of the corpus delicti, and the agency of the accused. So in the crime of receiving stolen goods knowing them to be stolen, and in the crime at bar, it is not possible to separate either conceptually or practically, the element of guilty knowledge in the transportation and the element of agency of the accused as the criminal. But this cannot operate to diminish the duty of the Government to present evidence of both elements of the corpus delicti independent of the confession" (94 F. [2d] 236, 244).

Similarly in this case, the *corpus delicti* includes the element of scienter on the part of each alleged conspira-

tor. As to each defendant "the evidence must convince that the defendant did something other than participate in the offense which is the object of the conspiracy. There must, in addition thereto, be proof of the unlawful agreement and participation therein, with *knowledge* of the agreement." *Langer* v. *United States*, 76 F. (2d) 817, 827 (C. C. A., 8) (our italics). And here also, it is not possible to separate, either conceptually or practically—that is in respect of the proof—the scienter, as an element of the *corpus delicti*, and the agency of the accused. Consequently, it follows that the requirement of corroboration of the *corpus delicti* here includes corroboration of the identity of each of the alleged conspirators, and the absence of such corroboration as to these three petitioners renders a conviction erroneous as a matter of law.

In the second place, were the view taken that the identity of the petitioners was not subject to corroboration by independent evidence, the rule of corroboration would be rendered meaningless here. In the words of the Circuit Court of Appeals below:

> "The grounds upon which the rule rests are the hasty and unguarded character which confessions often have, the temptation which, for various reasons, a party may have to state what would best serve his interest whether true or false, and the likelihood of misconstruing or incorrectly reporting what has been said and the danger of conviction where there has been no crime committed and the difficulty of disproving what has been said" (124 F. [2d] 58, 65).

The Court of Appeals of the District of Columbia gave an even more compelling reason for the rule in *Forte* v. *United States*, supra, when it stated that a real danger of false confessions, coerced or psychopathic, is created by the evidence in the decisions of the Courts, and the dependable reports of criminological investigations of lawlessness on the part of law enforcement officials (94 F. [2d] 236, 239). If it were possible to connect these three petitioners on the basis of their confessions alone with the alleged con-

spiracy here involved, precisely the situation, namely, a conviction on a false, coerced confession, that the rule of corroboration was designed to prevent could result. The requirement of the presence of some independent evidence of the defendant's connection with the crime would render such a result much less probable.

It is for these reasons that we maintain that the ruling of the Circuit Court of Appeals was erroneous. In our contention that the connection of the accused with the crime be designated an essential part of the *corpus delicti* in this conspiracy, we are merely insisting that the Court recognize that what is necessary for a conviction here is at least some independent evidence of the defendant's connection with the crime, a situation which has existed in every previous case we encountered upholding a conviction in which a confession was involved. A contrary view would ignore the character of a conspiracy, nullify the protection of the rule of corroboration, and facilitate the occurrence of injustice by removing a check to illegal and unscrupulous law enforcement techniques.

CONCLUSION

For the foregoing reasons, petitioners pray that the judgment of the court below be reversed, and that new trials be ordered for all of the petitioners.

Respectfully submitted,

LEE PRESSMAN,
Attorney for the Petitioners.

NATHAN WITT,
of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 10

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES,

Petitioners,

v.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

SUPPLEMENT TO BRIEF FOR PETITIONERS

LEE PRESSMAN,
Attorney for the Petitioners.

NATHAN WITT,
of Counsel.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

QUESTIONING OF PETITIONERS

Introductory Note

On behalf of the petitioners, this summary of the questioning of the petitioners who confessed is submitted pursuant to the request of Mr. Justice Black.

This summary is taken completely from the testimony of the Federal Agents. It differs from the summary of the Government in that it analyzes separately each *peti-*

tioner's questioning on the several days involved, rather than the questioning of all the petitioners arranged by the *day*. It also indicates the various questionings at which either the Sheriff or his deputies were present; these facts were not included in the Government's summary. The only material discrepancies between the Government's summary and this one are as follows:

(1) The Government states that Hubbard was questioned intermittently from 5 to 5:30 P. M. on Friday, April 26. We state the period to be from 5 to 6:30 P. M. The record supports our statement (R. 391).

(2) The Government omits entirely that Hubbard was questioned by Roche and Plaxico at 2 or 3 P. M. on Saturday, April 27 (R. 182).

(3) The Government omits to state that Plaxico questioned Simonds for one hour in the morning of Thursday, April 25, and that Mann questioned Simonds on the evening of the same day. We include those periods because of Plaxico's testimony at page 315 of the record, and Mann's testimony at pages 429 and 471 of the record, although Plaxico's testimony at page 315 of the record is inconsistent with his testimony at page 309 thereof.*

(4) The Government omits to state that Morgan and Plaxico questioned Woodward on at least two, and perhaps three, separate occasions which were not identified as to time (Morgan, R. 389; Plaxico, R. 294, 490).

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* Other examples of inconsistencies in the testimony of the Federal Agents are as follows: Roche—R. 182, compare R. 284; R. 429, compare R. 283, 787. Mann—R. 471, compare R. 326, 336. Plaxico and Roche—R. 490, compare R. 786-787. In each instance, where a question period has been indicated by an Agent, it has been included in our summary, although other testimony of the same Agent may not confirm the existence of the question period.

HUBBARD

(Arrested Wednesday, evening, April 24—R. 200)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period)
Thursday, April 25	Afternoon	— 2 hours	Roche (R. 181); Plaxico (R. 296-297, 309); Sheriff Biggs (R. 309); Mann (R. 322-323, 335); Hevron (R. 345, 351).
	Evening	— 2 hours	Roche, Plaxico (R. 282-283, 788).
Friday, April 26	1:30 or 2:00 p. m.	— 45 mins.	Roche (R. 434).
	5:00 p. m.-6:30 p. m. Intermittently, at ten or fifteen minute intervals	— 1½ hrs.	Morgan, McCabe (R. 384, 391, 398).
	7:30 p. m.-9:30 p. m.	— 2 hours	Lunsford (R. 358-359, 362-363); Whitten (R. 367-368, 374-376).
Saturday, April 27	Intermittently, all day. Started in morning—finished in late afternoon.		Morgan (R. 392-394).
	Either before or after lunch	— 2 hours	McCabe (R. 497-498).
	11 a. m.	— 30 mins.	Plaxico (R. 313).
	2 or 3 p. m.	—(Not stated)	Roche, Plaxico (R. 182).
	6 p. m.	— 15 or 20 mins.	Plaxico (R. 314).
Sunday, April 28	Afternoon (Confessed after Simonds did)	— 1 hour	Roche, Plaxico (R. 285).
Tuesday, April 30	Morning (Oral confession of Sunday reduced to writing)	— 2 hours	Lunsford (R. 359-360, 364-365); Whitten (R. 367-368, 379).

SIMONDS

(Arrested Wednesday afternoon, April 24—R. 224)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period)
Thursday, April 25	Morning —	1 hour	Plaxico (R. 315).
	2 p. m. —	2 hours	Roche (R. 173-174, 274, 282, 786-787); Mann (R. 326, 336, 471); Plaxico (R. 289, 309, 490).
	7 p. m. —	2 hours	Roche, Plaxico (R. 174-175, 274, 282-283, 787).
	Evening —	(Not stated)	Mann (R. 471, 429).
Friday, April 26	10 a. m. —	1 hour	Plaxico, Mann, Roche (R. 311-312).
Saturday, April 27	Afternoon —	20 mins.	Plaxico (R. 315, 490).
	Evening or Afternoon —	10, 15 or 30 mins.	Morgan (R. 387, 394).
	Afternoon —	25 or 30 mins.	Morgan, Chief Deputy Campbell (R. 387, 395).
Sunday, April 28	Afternoon — (Confessed after this hour of questioning)	1 hour	Roche (R. 176, 247-275); Plaxico (R. 289, 316).

WOODWARD

(Arrested shortly after noon on Wednesday, April 24—R. 247)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period).
Thursday, April 25	Afternoon	— 2 hours	Roche (R. 187, 279, 436, 789); Mann (R. 328, 336, 467-468); Hevron (R. 348, 353); Plaxico (R. 490).
	Evening	— 2 hours	Roche (R. 436, 789).
Saturday, April 27	(Not stated)	— 15 mins.	Morgan (R. 388-389, 818).
Sunday, April 28	Afternoon (After learning that Simonds and Hubbard had confessed)	— Confessed	Plaxico, Roche, Mann (R. 297).
Monday, April 29	11 a. m. 3:30 a. m. (Questioned in order to reduce confession of Sunday to writing).	— 2 p. m. — 7:30 p. m.	Hevron (R. 348, 354-355, 499, 500); McCabe (R. 497, 498); Mann (R. 328, 329, 341, 445, 470, 476, 477, 820).
Days Unknown	(Not stated)	— A little more than 15 minutes	Morgan (R. 389).
	(Not stated)	— Once or twice for not more than half hour at a time	Plaxico (R. 294, 490).

RHODES
(Arrested Sunday evening, April 28—R. 733-734)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period)
Monday; April 29	(Not stated)–(Not stated) (Confession after this period was taken down in writing)		Lunsford, Whitten (R. 524, 534, 801)

BALLEW
(Arrested Tuesday afternoon, April 30—R. 746)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period)
Tuesday, April 30	Afternoon	— 1 hour	Whitten, Lunsford (R. 537, 538).
Wednesday, May 1	(Not stated) (Confession after this period was taken down in writing. Ballew had been taken from Copperhill to Chattanooga, where he confessed—R. 537, 803)	— 5 mins.	Lunsford (R. 803); Whitten (R. 812-813).

QUEEN
(Arrested Sunday afternoon, April 28—R. 681-682)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period)
Monday, April 29	9 p.m. (Signed confession after this hour of questioning)	— 1 hour	Mann, McCabe and Hevron (R. 522).

FILE COPY

No. [illegible]

In the Supreme Court of the United States

October Term, 1941

Mitchell Clifton Anderson, John Edward Simonds, Earl Hubbard, Felton Moore Woodward, Marion Luther Ellis, Robert Lee Ballew, John David Queen, Robert Lee Rhodes, Petitioners

v.

The United States of America

On petition for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

Memorandum for the United States

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 868–884) is reported in 124 F. (2d) 58.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 4, 1941 (R. 867). The petition for a writ of certiorari was filed January 9, 1941.[1] The jurisdiction of this Court is in-

[1] The time for filing a brief in opposition was extended to and including March 26, 1942.

voked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the confessions of petitioners Woodward, Simonds, Hubbard, Queen, Ballew, and Rhodes were admissible in evidence against them.

2. Whether the Government was required to prove the participation in the conspiracy of petitioners Queen, Ballew, and Rhodes independently of their confessions.

3. Whether the trial court improperly limited the cross-examination of government witnesses.

4. Whether the evidence is sufficient to support the convictions of petitioners Anderson and Ellis.

STATEMENT

Petitioners were convicted [2] (R. 862–863) in the District Court of the United States for the Eastern District of Tennessee upon an indictment in one count (R. 2–22) charging that they conspired to damage property of the Tennessee Valley Authority, a corporation in which the United States

[2] At the end of the Government's evidence, the court directed verdicts of not guilty as to seven of the defendants: Van D. Jones, James Gordon Parr (R. 579), Tate C. Green, Leslie Bryant Green (R. 580), Clyde L. Huffman, William Clint Huffman, and Benjamin Cross (R. 581). Five of the defendants, John E. McGhee, Joel Martin Simonds, Thomas Wayne Henry, Meggs Collins, and William Rans Smith, were acquitted by the jury (R. 862, 863).

is a stockholder, in violation of Sections 35 (C) and 37 of the Criminal Code, as amended, 18 U. S. C., Secs. 82, 88.[3] Petitioner Anderson was sentenced to imprisonment for two years and to pay a fine of $5,000 (R. 31); petitioner Ellis to imprisonment for fifteen months and costs (R. 38); and petitioners Simonds (R. 32–33), Woodward (R. 33–34), Hubbard (R. 34–35), Queen (R. 35–36), Rhodes (R. 36–37), and Ballew (R. 39–40) to imprisonment for two years and to pay fines of $1,000. The judgments of conviction were affirmed by the Circuit Court of Appeals (R. 867).

A. THE EVIDENCE EXCLUSIVE OF THE CONFESSIONS

On July 14, 1939, the International Union of Mine, Mill and Smelter Workers (R. 615), affiliated with the Congress of Industrial Organiza-

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[3] 18 U. S. C., Sec. 82:

"Whoever shall take and carry away or take for his use, or for the use of another, with intent to steal or purloin, or shall willfully injure or commit any depredation against, any property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder, * * * shall be punished as follows: If the value of such property exceeds the sum of $50, by a fine of not more than $10,000, or imprisonment for not more than ten years, or both; * * *."

18 U. S. C., Sec. 88:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both."

tions (R. 698, 740) called a strike at the Tennessee Copper Company mines at Copperhill, Tennessee (R. 137, 689). Petitioner Anderson was the national representative and organizer for the Union (R. 614), and the other petitioners were members who went out on strike (R. 606, 652, 670, 681, 698, 734, 745). The plant was closed, but reopened six weeks later while the strike was still in progress (R. 550). Meanwhile, the sheriff of Polk County had appointed a large number of special deputies (R. 551, 553) and established headquarters at the company-owned Y. M. C. A. building at Copperhill (R. 540–541, 551–552, 733).

The strike continued through April 1940. At that time two transmission lines belonging to the Tennessee Valley Authority, a corporation in which the United States was a stockholder, led into that part of Polk County, Tennessee, and Fannin County, Georgia, known as the Copper Basin; the lines were supported on wooden poles and steel towers each of which had a value of more than Fifty Dollars (R. 125–126, 128–129). One line and its feeders was known as the Parksville, or Ocoee line; the other as the Blue Ridge line. From them the Company obtained power for its operations.

Shortly after midnight on April 1, 1940, both lines were dynamited, interrupting the service (R. 125–127).

On April 13, 1940, one Patterson came to the home of Freed Long in Isabella, Tennessee, and

told him someone wanted to see him at Willie McGhee's store. Long, who was the principal witness for the Government in proving the conspiracy, had a withdrawal card of the union and had helped on the picket line (R. 132, 137, 595). According to his testimony, Long walked to the store, where he was told that he was wanted at petitioner Anderson's office[1] (R. 132). Petitioner Ellis, who was at the store with Anderson's car, then drove Long to Anderson's office in Ducktown (R. 132, 137). There Long met Anderson, John McGhee, Clint and Clyde Huffman, Rans Smith, and Felton Woodward. Woodward, who is a petitioner here, and the Huffmans, who are not, left as Long arrived, after talking with Anderson in a tone inaudible to Long; but the others remained. Anderson then told Long that "they were going to try to shut the plant down and wanted to kind of jamb up the mine a little bit and wanted me to help them do that; the plans were to go down in the mine and blow up the magazine, they were going to shut the power off too, somebody was" (R. 133, 138). Anderson "said they wouldn't need fuse," that "it would be done by wires" (R. 133, 138–139). Long's part was to go down with them into the mines (R. 133–134). "Nothing was said about blowing the towers there that night or that afternoon, they

[1] Long testified that this was not the regular union office (R. 137).

just said the power would be off" (R. 133). At 8:45 p. m. the next night, April 14, 1940, a steel tower on the Parksville, or Ocoee, line was dynamited, interrupting service on that line (R. 125, 127–128). About thirty minutes later a steel tower on the Blue Ridge line was dynamited, but the power line did not go down and service on it was not interrupted (R. 128). The record does not show that any effort was made to blow up the mine.

Long also testified that on April 18, 1940, he attended another meeting in Isabella, Tennessee. Petitioners Anderson, Woodward, Hubbard, and Simonds were among those present (R. 139–140). "They talked about blowing up the mines and shutting off the power again, there was a little discussion about the power line, they somehow couldn't get going on it. Ed Simonds said on the 14th two of the men [Mutt and Tate Green] ran off and wouldn't help him." Anderson wanted the towers and poles blown up again (R. 134). Petitioner Simonds was to "look after" the Blue Ridge line, and petitioner Woodward the Parksville, or Ocoee, line (R. 134). Petitioner Simonds said "he believed he could get these men to go with him again to blow up the tower on the Blue Ridge end," and Woodward "finally agreed he could swing the lower [Parksville] end" saying, "I am sure we can go through with the lower end of it." The time was set for April 24.

As far as the mine was concerned, since Long was not experienced in mining, it was decided that he would stand guard outside the mine "to keep them from being surprised going in or out." Petitioner Hubbard gave Long a rifle which he "imagined" he was "supposed to use * * * to protect their entrance and exit from the mine" (R. 134, 135, 136).

After this meeting Long informed B. E. Biggs, the sheriff of Polk County, that the Parksville and Blue Ridge lines, as well as the copper mine at Isabella, would all be blown up at 1:20 a. m. on April 24th (R. 467, 557, 563, 564). The sheriff testified that he stationed men at the mine (R. 563–564), but that he was unable to patrol the power lines which extended for several miles (R. 467, 563). On April 24, between 1 a. m. and 2 a. m. towers on both the Blue Ridge line and the Parksville line were dynamited; on both lines service was interrupted (R. 125, 128).

In addition to Long's testimony the chief evidence for the Government was the confessions presently discussed, but there was other corroborating circumstantial evidence. Phelps, an employee of the Hercules Powder Company in Bessemer, Alabama, testified that a "John M. Cash" had bought dynamite and fuse from him on April 9, 1940. Casings found in the vicinity of power line towers after the first explosion showed that the same kind of dynamite had been

used to destroy them (R. 148–149, 162–164, 510–511). Phelps identified petitioner Woodward as John M. Cash (R. 511–512). There was also evidence that petitioner Ellis had been driving Anderson's car on back roads on the night of March 31st, when the first dynamiting occurred (R. 152–153). He was stopped about fifteen minutes before the first explosion and in the car were a brace and two bits (R. 153, 154, 156, 157, 160). Later it was found that the poles dynamited that night were wooden and had been bored with a brace and bit to make holes for the dynamite (R. 153).

The petitioners' defenses were denials of the Government's evidence and suggestions that the Company caused the lines to be blown up and the petitioners to be accused in order to break the strike. They explained that their meetings were to conduct union affairs, arrange strike benefits, and carry on ordinary union activities in respect to the strike. They offered numerous character witnesses. Petitioner Woodward offered witnesses to show that he was in Atlanta, Georgia, when John M. Cash was alleged to have bought the dynamite (R. 648–651). Petitioner Ellis explained that he was driving around on the night of March 31st to relieve his baby's colic (R. 606–607). Petitioner Ballew offered witnesses who contradicted statements in his confession by testifying that he was farming on certain days on which the confession stated that he was arranging

the explosion (R. 766–767). Otherwise, the petitioners offered no alibis.

B. THE CONFESSIONS AND THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE

On April 16, 1940, Special Agents Mann and Roach of the Federal Bureau of Investigation arrived in Copperhill to investigate the destruction of T. V. A. property (R. 165, 168, 332). Special Agent Plaxico arrived on the night of April 24, and Special Agents Lunsford, Whitten, Morgan, Hevron, and McCabe arrived shortly thereafter (R. 168–169). Sheriff Biggs had compiled a list of about 80 or 90 men in the Copper Basin who were experienced with powder and dynamite and gave that information to the agents (R. 194, 556, 562–563).

On April 24th Sheriff Biggs caused petitioners Hubbard, Woodward, and Simonds to be arrested "on State charges" (R. 200, 223, 247, 540); on April 28th his deputies arrested petitioners Rhodes and Queen (R. 733, 682); on April 30th Ballew was taken in custody (R. 746). On various days the sheriff also took in custody the remaining twenty-one original defendants. He made the arrests and held the petitioners on his own initiative on State charges.[5] The record does not support the petitioners' statement[6] or the implication in the brief filed on behalf of National Federation for Constitutional Liberties, *amicus curiae*,

[5] Pet. 5, 16–17.

[6] Br. 3, 5.

that he acted at the request of the Special Agents of the F. B. I. in arresting the petitioners (R. 170, 192, 303–304, 333–334, 542). Neither does the record show that "80 or 90 men were taken into custody";[7] the highest number mentioned in the record is that at one time or another the sheriff had arrested all twenty-one defendants (R. 540, 559); at least in the beginning he based his decision to make the arrests upon the information given to him by Long (R. 192).

The Special Agents questioned the men who were in the custody of the sheriff, using for the purpose the Y. M. C. A. in Copperhill (R. 170, 171, 191, 307). Petitioners Woodward, Hubbard, Simonds, Queen, Rhodes, and Ballew gave written confessions[8] which set forth in detail how the dynamitings were planned, how the dynamite and other equipment were obtained, moved, and concealed, and the technique used in blasting the poles and steel towers.

At the trial petitioners objected to the introduction of the confessions in evidence on the ground that they were obtained by duress and inducements (R. 167, 775–776). The court conducted a preliminary examination on this question in the ab-

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[7] Pet. 16; cf. Br. for *Amicus Curiae* 4, 5.

[8] Woodward (R. 445–462); Hubbard (R. 501–505); Simonds (R. 412–415); Queen (R. 518–521); Rhodes (R. 524–526); Ballew (R. 527–529).

sence of the jury (R. 168–401).* The evidence introduced during the preliminary examination was sharply conflicting; the facts stated in the petition at pages 14 through 20 and in the brief of *amicus curiae* at pages 4 through 6 are not "drawn from" and do not accurately "include" the testimony of Government witnesses. For this reason we set forth as to each petitioner separately the evidence introduced at the preliminary hearing.

Simonds. Petitioner Simonds, one of the men on strike, was arrested on Wednesday, April 24, 1940. He was taken by two deputy sheriffs to the Y. M. C. A. in Copperhill where Agent Mann questioned him for an hour and three-quarters (R. 223–225). He testified that that night he was placed in jail with Felton Woodward "and maybe someone else" in a seven by nine foot cell with nothing to eat for supper (R. 225). Around seven o'clock he was questioned again for about two hours in the Y. M. C. A. and returned to the city jail (R. 226). In the morning he was given a cold bologna sandwich to eat and some coffee; and the same thing for lunch and supper (R. 226–227). During the day he was questioned—he couldn't remember how long—and again that night for one or two hours (R. 227).

* In the instances of the confessions of Rhodes, Queen, and Ballew, the evidence was heard by the court in the presence of the jury by agreement to expedite the trial (R. 516–517).

Simonds was also uncertain as to the hour at which this questioning occurred; at first he said that it was "close to midnight" but later he volunteered that it was "before midnight" but "after my bedtime"; "it must have been around 9 or 10 o'clock" (R. 227, 236, 237). The next morning (which would have been Friday, April 26th) Simonds ate a bologna sandwich and some coffee which had a sickening taste, upset his stomach and made him nervous (R. 228). He testified that he was questioned again that day and made a statement "four or five days after I was picked up" (R. 229). No questions were asked Simonds as to what took place or how he was treated on the other days during which he was in custody before his confession was signed.

Simonds also testified that he asked for a lawyer on the day after his arrest, when Agents Roach, Mann, and Plaxico were present, but that they refused, telling him he had become "damned smart" in one night in jail; neither was he allowed to see "anybody from the outside" (R. 230, 239). At various times when the door to the room in which he was being questioned was opened, he saw armed deputies laughing as they passed but he did not know whether they were laughing at him (R. 230). The agents, Plaxico for the most part, Simonds said, promised to influence the judge to give him a light sentence or a "parole" if he made a statement, and threatened that he would be sentenced to fifteen years if he did not

(R. 230–231, 237–238); and Plaxico also said that he might be able to have bail set at a $1,000 bond (R. 231, 239). Finally, Simonds testified that the agents often said that they knew the truth and called him a damned liar and that on one occasion Agent Mann stepped up close, "slung" back his hand and called him "a God damn lying son-of-a-bitch" (R. 231–232). Simonds claimed to have lost almost forty pounds during the questioning (R. 232).

The Government introduced evidence to contradict Simonds' claims. Roach, Plaxico, and Mann testified that they first questioned him for two hours on April 25th, Thursday, and for two hours more beginning at seven o'clock that night, for an hour on Friday morning and then again on Sunday when he made his confession after an hour of questioning (R. 173–174, 176, 274, 279, 285, 289, 311–312, 326, 336). On Saturday Agent Morgan asked him questions for a short time (R. 387). Each of these agents swore that Simonds did not request counsel (R. 175, 290, 325, 327, 359, 368, 372, 388). Each denied that he or any other agent in his presence threatened a heavy sentence or promised a light one (R. 176, 290, 291, 296, 327, 337, 388; cf. R. 372). No other agent questioned him for more than half an hour (R. 278, 345, 348, 361, 387; cf. R. 372). Likewise Roach, Plaxico and Mann denied in general terms that they had promised anything to obtain a statement (R. 274, 291, 296, 327, 337, 347); and specifically denied that

they had said that they would arrange a low bond (R. 176, 277, 317, 337) or probation or parole (R. 274, 277, 287, 295, 296, 317, 337). Agent Morgan gave similar evidence (R. 388). A deputy sheriff, Campbell, testified that he had told some of the men in jail that Plaxico would recommend a parole for "those boys that come clean," but he could not remember when the statement was made (R. 272–273) and Simonds did not claim to have heard it. Each agent also testified that neither he nor anyone in his presence had cursed at Simonds or called him a liar; and it was denied that Mann had threatened to strike him (R. 186, 276–277, 287, 292, 372). The agents explained that their procedure was to break down petitioners' stories by checking their alibis with relatives and friends and confronting them with the results of such investigation (R. 134, 184–185, 193, 292, 320–321, 328, 340–343). In Simonds' case, Plaxico explained what took place as follows (R. 291; cf. R. 194–195):

> Well, on the first occasion we had information involving Ed Simonds, we went in there and talked to him very plainly about what we had, and pointed out to him the information we had, and he denied everything so we went on about our business; and the second occasion, that was Sunday afternoon we went over the entire case with him, and pointed out the discrepancies in his story and the information we had developed on investigation, which knocked down his alibi.

and out of a clear sky he said "well, I want to tell you I am guilty."

Simonds told the agents, they said, that they were "the finest bunch of men he had ever come in contact with" (R. 292). There was also general evidence, applicable to Simonds, that none of the men in custody were mistreated. Roach testified that the petitioners commented upon the fact that they had been treated well and had had good food (R. 188–189, 196) and Plaxico recalled that Simonds himself had commented on the good food served to him (R. 292). And although they did not take the stand at the preliminary examination, it is appropriate to point out that the sheriff and two deputies testified before the jury that the men in custody ate the same food as the deputies, that the food was carried to the jail when necessary,[10] that the men in custody usually slept at the Y. M. C. A. "in the same kind of beds" that were furnished the deputies, and that no one was forced to spend more than two nights in jail (R. 554,

[10] Hensley, the cook at the Y. M. C. A., testified (R. 570) that "The deputy sheriffs ate the same meals as the prisoners. They had the same things as the guards ate. We would run a regular course of meals through the week and chicken on Sunday, roast beef, stew, steak and onions, or something like that. We had coffee about 19 cents a pound, I made it in an urn and drank it myself and these men drank the same sort of coffee I did. I never put anything in the coffee. I have carried food down to the city jail from the Y. M. C. A. myself."

566–569, 670). Mrs. Simonds knew that Simonds was being questioned (R. 178–179, 287); and the Union apparently was prepared to give legal aid.[11] He could talk and consult with his associates for they were being held in custody together.

Woodward. Petitioner Woodward testified at the preliminary examination as follows: Shortly after noon on Wednesday, April 24, 1941, he was arrested and taken first to the Y. M. C. A. and then to the city jail (R. 247–248). He was given no supper that night and the next morning, Thursday, only a bologna sandwich and coffee for breakfast, bologna sandwiches for lunch and no supper (R. 248–249). He was questioned for the first time Thursday night by Roach and another man (R. 249, 252). The questioning lasted three hours, after which Woodward was returned to the city jail where four men were crowded into

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[11] Counsel had been retained by the Union "two or three weeks before this matter arose." This counsel testified that he had to make "considerable effort to contact the men in custody who I considered to be my clients, before I was permitted to see them." The record does not show that counsel made any effort to obtain their release from custody prior to the day upon which they were arraigned (R. 768–770). Campbell, Chief Deputy Sheriff of Polk County, R. 268), testified that on one occasion Mr. Hunt and Mr. Townsend (petitioners' counsel) came to Copperhill to see petitioners and Campbell told them they would have to get permission from Sheriff Biggs, who was out at that time, before they could see the men (R. 271). The record does not show whether counsel waited or made any attempt to see Biggs.

one cell (R. 250). Friday morning he had more bologna and coffee, which gave him a headache and made him sick and restless (R. 250–251). He was questioned for three hours that afternoon and for three or four hours that night and returned to the city jail about eleven o'clock (R. 251). Saturday morning he had another sandwich to eat and was left in jail all that day and all day Sunday without anything to eat (R. 252). He was questioned Saturday—he did not say how long—and signed a statement at eleven or twelve o'clock Monday night (R. 253).[12] He claimed to have lost fifteen pounds during this period (R. 240, 265).

Like Simonds, Woodward claimed that various agents promised "to take care of" him if he would confess, and to arrange low bail and a parole (R. 261, 262–263). He also said that on one occasion Agent Morgan forbade him to smoke (R. 257), and cursed him as a liar (R. 254), and threatened that he would be taken to Atlanta and made to talk (R. 260). Woodward did not, however, assert that he asked for or was denied counsel. His father-in-law testified that he was refused permission to see him (R. 642–643).[13]

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[12] In testifying before the jury Woodward added that he was questioned three hours Saturday, four or five hours Sunday, and that Monday night he signed a statement after being questioned "almost all night" (R. 693–695).

[13] Sid Howell, petitioner Woodward's father-in-law, testified that on Thursday, April 25, he went to the Y. M. C. A. to see Woodward, and deputy sheriff Rose said "there wasn't anyone allowed to see him at all"; that he went

The federal agents gave evidence contradicting Woodward's charges. The general testimony to which we have referred in stating the circumstances of Simonds' confession applies equally to Woodward. See p. 15, *supra*. The agents also specifically denied that Woodward was questioned as often or for as long as he asserted. Morgan testified that he questioned Woodward on two unspecified occasions for about fifteen minutes (R. 389). Roach testified that he had interrogated Woodward for two hours on Thursday, April 25th (R. 187, 278–279); Mann and apparently Hevron were also present (R. 328, 348).[14] Roach questioned him again between seven and nine o'clock that evening (R. 436). Woodward was questioned next on Sunday afternoon (R. 187, 294, 328, 373). He was brought into the room at the request of Simonds and Hubbard after they had confessed and, upon being told of their confessions, admitted his guilt (R. 195, 275, 293, 294, 297,

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again on Friday, April 26, and another deputy, Creed Brock, told him "that no one was allowed to see him at all, that they was questioning him" (R. 642); and that on Saturday, inside the City Hall in Copperhill, he was permitted to talk to the Woodward brothers through a peephole (R. 643). Sheriff Biggs, however, testified, "I didn't refuse to let Sid Howell see Felton Woodward, but he possibly was not allowed to see him while he was being talked to by me or some of my officers" (R. 555).

[14] Hevron testified that he and Mann did the questioning on Thursday (R. 348). Roach and Mann testified that they questioned Woodward that day but neither was asked who was with him (R. 187, 328). Woodward testified that it was Mann and one other (R. 249, 252).

323, 328). At that time Mann, Plaxico, and Roach were present (R. 180, 293, 328). On Monday, Woodward's statement was reduced to writing (R. 187, 294, 329, 341, 353–354). It consisted of five typewritten pages, single spaced (R. 445–462), and much of the time was spent in typing it, because Agent Mann could not type rapidly (R. 329, 343). They worked at it from about 11 a. m. until 2 p. m., and then recessed for lunch, and came back at about 3:30 p. m. and worked until 7 or 7:30 p. m. (R. 341, 354, 470). Woodward had trouble recalling details as to the times of the dynamitings and the meetings he attended. "He would state facts and then want to change them and rather than change it or erase it I [Mann] indulged him a long period of time and waited. Sometimes he would sit five minutes meditating over what we asked him" (R. 343). The statement was taken by Mann, McCabe, and Hevron (R. 187, 328–329, 348, 354). Agents Whitten and Lunsford never questioned Woodward (R. 361, 373); Morgan questioned him twice but only for about fifteen minutes (R. 389).

The agents denied specifically Woodward's assertions that he had been promised that he would "be taken care of" (R. 296, 330), that a low bond would be arranged (R. 337)[15] and that a

[15] The United States Commissioner, before whom petitioners were arraigned on May 1, 1940, on federal charges testified that Agent Mann requested that he fix the bond on some defendants at $1,000 and on the others at $3,000 (R.

parole would be secured for him (R. 280, 295, 296, 330).[18] It was also denied that Woodward had been threatened (R. 390) or told that the agents were in the Copper Basin to break the strike (R. 280, 295, 330, 349, 389–390) or called a damned liar (R. 278, 280, 295, 349, 389). The agents also testified that Woodward was told that he need not make a statement but that he chose to do so voluntarily (R. 193, 445). When the statement had been typed out Mann read it over to him slowly and Woodward said it was the truth (R. 357).

Hubbard. Petitioner Hubbard was arrested without a warrant on the evening of April 24th and taken to the Y. M. C. A. and then to the city jail in Copperhill (R. 200–201). He testified that he was questioned for the first time on Thursday morning about eleven o'clock for three or four hours and spent that night at the Y. M. C. A. without further questioning (R. 201–202); that on Friday morning he was questioned for two hours and on Friday afternoon for "two or three or four hours" (R. 202–203) and that he and three other men, including a drunk, were placed in a small cell that night in the city jail (R. 203). On Saturday, Hubbard said, he was questioned from nine o'clock until five-thirty by relays of two agents

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217–218, 221) and had a note that some days later Mann requested that Woodward's bail be reduced. Mann denied positively that he had made any such recommendations (R. 338).

[18] Compare Campbell's testimony, p. 14, *supra*.

who interrogated him an hour at a time (R. 204); his glasses were taken off and he was "pushed up straight" in a straight-backed chair (R. 204–205); at noon he asked for a doctor but was given aspirin and told that he did not need medical care; the doctor finally came after dark (R. 205). All that day, he said, he was refused water and cigarettes (R. 207); he was given nothing more to eat—and asked for nothing—although his breakfast had been bologna and the coffee had tasted peculiar and given him a headache (R. 206–207). Hubbard also testified that the agents called him a damn liar and told him that they knew the truth (R. 206), that all day Saturday he was promised a nice meal and a drink of water if he would confess (R. 207); that a $1,000 bond could be arranged; that deputies laughed at him and sneered when they passed the open door (R. 208, 209); and that he asked for a lawyer and was refused (R. 208). Hubbard claimed to have lost twenty pounds during these six days (R. 209).

Each of Hubbard's allegations was denied. He was questioned by Roach, Hevron, Plaxico, and Mann for about two hours on Thursday afternoon, April 25th (R. 181, 297, 323, 345, 352) and for two hours that evening by Plaxico (R. 283, 296, 297). Whitten and Lunsford interrogated him the following evening from seven-thirty to nine-thirty (R. 358–359, 363, 365, 367, 375, 376). Morgan and perhaps McCabe asked questions for fifteen or twenty minutes or longer (R. 384, 391). Plaxico and Roach asked Hubbard questions on Sat-

urday, the day on which, according to Hubbard's testimony, the questioning was most prolonged, for two periods of less than half an hour (R. 182, 313, 314, 378, 392). On Saturday, McCabe also questioned him for about two hours (R. 497). On Sunday, Hubbard confessed immediately after Simonds; he had been in the room while the agents were talking to Simonds (R. 194–195, 275, 293, 294, 297). Later that evening after Woodward also had confessed, the three were placed in jail together at their own request "to get the details of their stories straight" (R. 188, 276, 326–327). Hubbard's confession was written out as he repeated it on April 30th in about two hours (R. 365, 379).

During these periods of questioning, the agents stated, Hubbard wore his glasses (R. 183, 299, 324, 346, 359, 368; cf. R. 387); he was allowed to smoke and smoked almost continuously (R. 299, 324, 325, 345–346, 359–360, 369–370, 385); he was not called a liar (R. 299, 360, 364; but cf. R. 356–357, 399) or cursed (R. 299, 324, 325, 346, 360) or pushed back in his chair (R. 346, 360, 369, 386); no threats or promises, and no offer of a light sentence or parole, were made to him (R. 281, 324, 347, 359, 361, 371, 377, 386); he was not refused water (R. 325, 360, 368, 385) or offered a good meal if he would make a statement (R. 369; see also R. 809). The agents testified that when Hubbard complained of a headache they wanted to call a doctor but Hubbard said that he would be all right and they gave him an aspirin (R. 393.

cf. R. 370–371). The doctor, who was summoned later, found that Hubbard had an ordinary cold and gave him some capsules "what we usually give for common colds" and a laxative (R. 199; cf. 183). Finally, there was evidence that on the only occasion on which Hubbard asked for an attorney he instantly changed his mind saying that he did not need one because he had done no wrong (R. 346–347, 352; cf. R. 325, 359, 368, 385).

Rhodes. Petitioner Rhodes testified as follows: He was arrested Sunday night around 8 o'clock and spent the night in jail in the cell with Woodward, Simonds, Queen, and Hubbard (R. 733–734). At 10 o'clock on Monday he was questioned for an hour and half or two hours by Agents Whitten and Lunsford who repeatedly called him a liar (R. 734, 736). He signed a statement typed by Lunsford at that time "because he told me to sign it" and because Lunsford said "they would take care of me" (R. 736).

Agents Lunsford and Whitten both testified. Each denied that he had called Rhodes a liar (R. 801, 809), that they had promised "to take care of him" (R. 801, 809) or that they had promised or threatened anything to obtain his statement. (R. 524, 810).[11]

[11] Rhodes also said he "couldn't see a lawyer or anybody" but apparently was speaking of the day on which he pleaded guilty (R. 737). The agents were not asked specifically whether Rhodes asked for an attorney before the confession was signed.

Queen. Petitioner Queen testified that on Sunday afternoon, April 28, when he was arrested, his baby was seriously sick (R. 682); that he and four of the others were put in one cell that night and that on Monday he signed a paper, not knowing what was in it, "because the FBI men, Mr. Mann and Mr. McCabe was there and after they got through talking with me, they got up and turned their backs and McCabe wheeled around and said sign this right here, I guess you are in hurry to get back to your wife and baby" (R. 683, 684).

The agents denied Queen's assertions (R. 794, 820–821). McCabe took the statement in his own handwriting (R. 522). No promises or threats of any sort were made to obtain Queen's confession (R. 518, 523, 821); on the contrary, the agents testified, he said "he was anxious to give a statement, that he thought he had been misled" (R. 523).

Ballew. Petitioner Ballew, according to his evidence, was arrested a few yards over the state line in North Carolina, forcibly brought into Tennessee where he was handcuffed, and taken to the Y. M. C. A. at Copperhill (R. 746–748). There he was questioned from 4 o'clock in the afternoon until about 6 o'clock by Agents Lunsford and Whitten and then was taken to jail (R. 748, 752, 755). Next morning, he went to the court house and signed, without reading, a paper which he thought was a release because Whitten told him to sign it and he could go home (R. 752–753, 761). He admitted, however, "nobody cussed me out and

I was not abused or threatened" (R. 758, cf. R. 747). Ballew, like the others, denied making the statement although he admitted that he signed it (R. 756, 759).

Agents Lunsford and Whitten both testified that Ballew was not arrested (R. 801–802, 811). "When he came out [of the house], at our request, on his own free will and acquiescence, he agreed to accompany us to Copperhill where we could talk to him and take our time. He said he would be glad to cooperate in any way since he knew nothing at all about the matter at that time" (R. 810–811, cf. R. 801–802). Lunsford and Whitten also testified that no handcuffs were used (R. 802, 811); that they went to Copperhill because the house where Ballew was found was full of people (R. 806, 814–815); and that Ballew himself asked to stay at the Y. M. C. A. to talk to the sheriff although the agents offered to drive him home (R. 817). Before he signed his confession in the courthouse, the agents said, Ballew talked to Simonds, read the confession, and it was read to him (R. 803, 812, 813). The agents denied that they told him he was signing a release (R. 803, 813).

After the close of the preliminary examination the court ruled that the confessions were admissible in evidence (R. 403, 775–776). The judge concluded that there was "no showing so far as duress is concerned that they were forced to make any statement that was an involuntary statement" and that the statements were not made "as the result of any promise of reward" (R. 403).

Substantially the same testimony as the judge heard on the preliminary examination was given again in the presence of the jury. The court submitted to the jury on this evidence the question whether the statements were voluntary and charged that the confessions should not be considered unless the jury first found that they were freely and voluntarily made (R. 831). He discussed the rule and relevant considerations in great detail and charged in part as follows (R. 831–832):

> * * * It is primarily for the Court to determine whether or not such statements are admissible for your consideration but it is wholly for you to determine how much weight or credit you will give to these statements. In doing this I instruct you that before you can consider the confessions of the defendants, or any of them, you must first find that they were freely and voluntarily made, without fear or compulsion, or hope of reward. In determining this matter you will take into consideration all the facts and circumstances in evidence before you bearing on this subject; that is the way and manner in which confession or admission was obtained. * * * In passing on this question you will consider the age, experience, education, station in life and physical condition of the defendants; whether they had friends, relatives, or counsel present; whether the questioning was carried on in an unreasonable manner and at unusual hours; whether or not they or

any of them had been given drugs; whether they had sleep or food, whether or not they were kept in a private building or abused or cursed and forced to do other acts against their will.

ARGUMENT

I

The principal question raised by the petition is whether the evidence shows that the confessions were admissible in evidence against the petitioners.[18] We shall discuss the situations as to each of the petitioners.

A. PETITIONERS ANDERSON AND ELLIS

Petitioners Anderson and Ellis did not confess. Under the court's rulings the confessions made by other defendants could not be used against Anderson and Ellis (R. 403–410). Petitioners Anderson and Ellis, therefore, have no standing to complain that involuntary confessions were used against them.

B. PETITIONERS RHODES, BALLEW, AND QUEEN

Petitioners Rhodes, Ballew, and Queen confessed and their confessions were introduced in evidence. But the record seems to raise no substantial question as to whether their confessions were admis-

[18] The petition seems to present the case under the "due process" clause of the Fifth Amendment and we shall emphasize that ground. Logically, however, the question can also be considered on the basis of the rules of evidence and of the privilege against self-incrimination.

sible. Each testified that he was unlawfully arrested and spent one night in jail with other defendants. Rhodes was questioned for an hour and a half or two hours on the day after his arrest, and confessed; according to his testimony, he was called a "damn liar" during the questioning but the agents denied this charge and he complained of no other mistreatment. Ballew was questioned from four o'clock to six on the afternoon of his arrest and made a statement the next day; he admitted that he "was not abused or threatened" (R. 758). Queen was anxious for his sick baby but did not testify that the agents or deputy sheriffs mistreated him.

Rhodes also testified that he signed the confession "because [Agent] Lunsford said they would take care of me", and Ballew and Queen gave evidence that they signed papers containing confessions without knowing the contents because they were told that if they signed, they could go home. Each of the agents, however, specifically denied each such incident and testified that the statements taken by him were deliberately and freely given without inducement of any kind. The trial court and the jury under careful instructions resolved the factual issue against the accused (*supra*, pp. 25–26).

This Court has stated that in appropriate cases it is bound to make an independent examination of the record, a duty not foreclosed by the finding of a court, or the verdict of a jury, or both

(*Lisenba* v. *California*, Nos. 4 and 5, this Term, decided January 19, 1942), but that where the evidence is conflicting as to the methods used the Court accepts the determination of the triers of fact unless it is so lacking in support that to give it that effect would work that fundamental unfairness which is at war with due process (*Id.*).

As to Rhodes, Ballew, and Queen, the testimony of occurrences prior to their confessions, considered with the findings of the triers of the facts that those occurrences did not render the confessions involuntary, do not furnish justification for holding that due process was denied or that their confessions were involuntary.[18]

C. PETITIONERS WOODWARD, HUBBARD, AND SIMONDS

Petitioners Woodward, Hubbard, and Simonds present closer questions as to whether their confessions were inadmissible as the result of compulsion, inducements or threats. Though the ultimate issue is whether under all the circumstances the confessions were made voluntarily, in the interests of greater clarity we shall discuss separately (1) compulsion, and (2) inducement and threats.

1. *Compulsion.*—We may at the outset lay to one side the presentation of the evidence by the petition and the brief of National Federation for Constitutional Liberties, *amicus curiae*. The case

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[18] Rhodes, Ballew and Queen did not give any testimony suggesting that they had heard from Campbell or any one else of Plaxico's alleged offer of a parole for "Them boys that come clean." See p. 14, *infra*.

is there presented as if much of the evidence set forth were uncontradicted, notwithstanding that Government witnesses specifically and fully denied the testimony of maltreatment and intimidation. For example, there was decided conflict as to the character of the food and the hours and manner of questioning; likewise, as to the claim that the coffee was drugged, that Hubbard was denied his glasses and food, water, and cigarettes, that Simonds and Hubbard asked for and were refused counsel, and that all three were terrorized by armed deputies hostile to them. We have already in our Statement (*supra*, pp. 11–23) set forth the conflicting testimony in detail. The district court at the preliminary examination heard the witnesses on both sides as to the circumstances under which the confessions were made (R. 167–400). The court found no duress (R. 403). Much the same testimony was repeated in the presence of the jury with instructions not to consider the confessions at all unless they were made voluntarily and to pass upon each confession separately (R. 831–833). While this Court is not foreclosed from examining the evidence, it has only recently held that it will not lightly overturn the resolution of conflicting evidence by court and jury—it must be so lacking in support that to give it effect would work fundamental unfairness. It cannot be said that fundamental unfairness would result in this case from giving effect to the findings of court and jury so far as concerns such claims of peti-

tioners as that they were abused, badly fed, sought and were denied counsel, and were terrorized by deputies. *Lisenba* v. *California*, *supra*.[20]

There remain the following undisputed facts upon which it must be determined whether, as matter of law, they render the confessions involuntary or show "fundamental unfairness" notwithstanding that the triers of the facts found them voluntary: Woodward, Hubbard, and Simonds were arrested without warrant by deputy sheriffs "on State charges" on the afternoon of Wednesday, April 24th, and were held in the custody of state officials until Tuesday, April 30th, when they were arraigned before a United States Commissioner.[21] All three were held at times in the Y. M. C. A., a building owned by the Company against which they had gone on strike and used as the headquarters for deputy sheriffs appointed when the Company reopened its mine; there were perhaps twenty-five deputy sheriffs. At other times Woodward, Simonds, and Hubbard were held in the city jail; there, on two nights, four or more were crowded into one small cell.

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[20] The Court has hitherto set aside findings that confessions were voluntary only when facts not in conflict showed that compulsion was applied. *E. g.*, *Wan* v. *United States*, 266 U. S. 1, 16; *Brown* v. *Mississippi*, 297 U. S. 278, 287; *Chambers* v. *Florida*, 309 U. S. 227; *White* v. *Texas*, 310 U. S. 530.

[21] The petition implies that the federal agents detained the petitioners (Pet. 10). They were held by the sheriff on his own initiative. See pp. 9–10, *supra*.

They saw no one "from the outside." They saw each other and other strikers who were in custody; the Special Agents were in communication with the families. Simonds, Hubbard, and Woodward were questioned separately for about two hours on the afternoon of Thursday, April 25th, and again for about two hours that evening. Hubbard was questioned again on Saturday and there were other occasions on which they were questioned for short periods. On Sunday, April 28th, all three confessed after questioning which lasted on that day less than two hours; Simonds first and then Hubbard, who was in the room when Simonds confessed; then Woodward was brought in and he made an oral statement after the other two told him what they had done. Simonds' statement was at once reduced to writing. Woodward's confession was written out in two long sessions on Monday; he gave minute details. Hubbard's written confession was made Tuesday.

There are diverse elements in these undisputed facts upon which a judgment as to compulsion now turns: (a) The sheriff and his deputies held the men for six days without arraignment. This we assume was illegal, and such conduct has been sternly condemned by this Court. *Lisenba* v. *California*, *supra*. But such illegal conduct does not of itself justify exclusion of a confession in a state court. *Lisenba* v. *California*, *supra*. We, therefore, cannot say a contrary result obtains here. (b) The confessions were elicited in response to questioning; but the questioning wa-

not oppressive, and this Court has squarely held that confessions elicited in response to questions by law-enforcement officers are not thereby rendered inadmissible. *Wan* v. *United States*, 266 U. S. 1 (a federal trial); *Lisenba* v. *California*, *supra* (a state trial). Compare the earlier case of *Bram* v. *United States*, 168 U. S. 532. (c) The crimes grew out of a labor dispute; there were many armed deputies about as a result of the strike, and the men were held at times on company-owned property. But the deputies did not participate in the questioning and no petitioner so much as intimated that fear of them played a part in his decision to confess. If the surrounding circumstances contained some element of intimidation, though not voiced by petitioners at the trial, there was, on the other hand, an element of strength in the close association of petitioners with one another and with their fellows while in custody. They were not alone and unsupported. Compare *Chambers* v. *Florida*, 309 U. S. 227; *Wan* v. *United States*, *supra*. (d) For two nights they were crowded in a cell, but on the issue of the confessions this does not loom large for one of those nights was after they had confessed and in response to their own request that they be placed together.

It appears, therefore, from those facts that are not in conflict that officers subjected those suspected of crime, who were without counsel and

were illegally held, to somewhat lengthy but periodic and not oppressive questioning, in an atmosphere of possible hostility but also during a time when they had the association of one another. They were confronted with the results of investigations otherwise conducted, were questioned about these matters and their own activities, and finally admitted their guilt.

The facts of no two cases are alike. The circumstances in the *Wan* case were much graver; so, too, were the circumstances in *Chambers* v. *Florida*. In *Lisenba* v. *California*, fundamental error was not found in the admission of the confession. The Court said that the case was close; but unless federal trials are to be held to a stricter standard than state trials, it cannot be said under the principles there discussed, that a denial of due process has here occurred.

2. *Inducements and Threats.*—Petitioners Hubbard, Woodward, and Simonds also contend that rewards were held out to them to confess, that the federal agents promised them preferred treatment such as low bail bonds, light sentences, and "paroles," and that they were threatened with severer punishment if they kept silent. But with an exception presently to be noted every claim of threats and inducement was specifically denied and the petitioners' contentions on this point present an issue of credibility on which the findings of court and jury should not be disturbed in the

absence of a showing that to give those findings finality would work fundamental unfairness. *Lisenba* v. *California, supra.* The exception is that Campbell, a deputy sheriff, testified without contradiction that he had told "four or five" of the men in custody that Agent Plaxico had said he would "recommend a parole for those boys that come clean" (R. 273). Plaxico denied that he had made such a statement to Campbell but testified that Campbell had asked him to recommend leniency and that he had replied that all he could do would be to tell the facts (R. 318). This talk between Plaxico and Campbell, however, took place after the confessions had been signed (R. 318). To accept Campbell's testimony of what he told some of the men in custody [22] would avail petitioners nothing because it was not shown that he made the statement to any men in custody before the confessions had been signed. Moreover, there is no evidence that Campbell talked about parole to any of the petitioners or that any of the petitioners were told what he said; no petitioner claimed that Campbell offered any improper inducement to him, and other men were in custody.

Here, too, then, it cannot be said that fundamental unfairness would result from giving effect

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[22] Although Campbell was first called by the Government (R. 151), he gave this testimony as the defendants' witness (R. 268, 273).

to the conclusions of the triers of the facts that the confessions were not the product of inducements or threats.

On the whole, on the basis of a careful and, we believe, fair analysis of the case, we conclude that the decision below was correct.

II

The second question raised by the petition for certiorari is whether a confession is sufficient to support a conviction in the absence of other evidence showing that the defendants participated in the conspiracy. This question is raised only by petitioners Queen, Rhodes, and Ballew (Pet. 3, 8, 24, 25).

Under this head no serious question is raised. The record is clear that the *corpus delicti*, i. e., existence of a conspiracy and an overt act, was proved independently of the confessions by the testimony of Freed Long (see pp. 4–7, *supra*). And it is settled law that the identity of the accused is not a part of the *corpus delicti*, and a confession alone is sufficient to prove participation in the crime once it has been proved that the crime was committed. *Vinkemulder* v. *United States*, 64 F. (2d) 535 (C. C. A. 5), certiorari denied, 290 U. S. 666; *United States* v. *Marcus*, 53 Fed. 784, 786 (C. C. S. D. N. Y.) error dismissed *Marcus* v. *United States*, 159 U. S. 259; *Ryan* v. *United States*, 99 F. (2d) 864, 870 (C. C. A. 8).

certiorari denied, 306 U. S. 635; *Murray* v. *United States*, 288 Fed. 1008, 1015–1016 (App. D. C.); cf. *Forte* v. *United States*, 94 F. (2d) 236, 244 (App. D. C.). The cases cited by petitioner (Pet. 25), are distinguishable.[23]

III

All the petitioners complain that the trial court improperly limited the cross-examination of government witnesses by sustaining objections to questions designed to show the number of extra deputies the sheriff had employed (R. 157, 551), that they were paid by the company (R. 553, 568) and that they had been instructed to search the petitioners' cars when "found out at night" (R. 154, 560, 608). It is their contention that the responses to these questions would have shown (1) that the confessing petitioners were intimidated into signing their statements and (2) that the company itself caused the lines to be dynamited (Pet. 28).

No question calling for review is presented by this contention. The questions were not asked to test the credibility of the witnesses, but were di-

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[23] *Warszower* v. *United States*, 312 U. S. 342 and *Goldstein* v. *United States*, 99 F. (2d) 305 (C. C. A. 10) point out that without proof of the crime, a confession alone will not support a conviction. *Langer* v. *United States*, 76 F. (2d) 817 (C. C. A. 8) held that proof that a defendant committed the substantive offense does not prove that she engaged in a conspiracy.

rected to collateral matters. "The extent to which cross-examination upon collateral matters shall go is a matter peculiarly within the discretion of the trial judge. And his action will not be interfered with unless there has been upon his part a plain abuse of discretion." *United States* v. *Manton*, 107 F. (2d) 834, 845 (C. C. A. 2), certiorari denied, 309 U. S. 664; *Glasser* v. *United States*, Nos. 30–32, this Term, decided January 19, 1942; *Alford* v. *United States*, 282 U. S. 687. In the present case the dangers of opening up the collateral subjects of the strike, of the violence and lawlessness in the community and of the need for searching cars and for extra deputies (compare R. 548–549) are sufficient to show the reasonableness of the district court's ruling.

Moreover, as the circuit court of appeals held, "the proferred testimony was irrelevant and if answers had been elicited from the witnesses, they would have thrown no light on the issues in this case" (R. 883). Assuming that the witnesses would have testified that the deputies were paid by the Company and that an order had been issued to search petitioners' cars, such testimony would have had but a remote bearing upon petitioners' theory that they were intimidated into giving confessions to the federal agents (Pet. 28).[24] None of

[24] Petitioners also complain (Pet. 26) of the court's refusal to allow petitioner Ellis to state how many times his car had been searched (R. 608), but Ellis did not confess, so that even if his car had been searched, he was not thereby coerced into confessing—and, obviously, the confessing petitioners could not have been thereby intimidated.

the petitioners testified that the deputies directly or indirectly brought about their confessions (See p. 33, *supra*). Similarly, proof that the company was paying the salaries of the deputies, however undesirable an example of administration of public law it might be, would hardly have justified an inference that the company "through the sheriff and the special deputies or guards blew up the lines in order to get Government agents in and break the strike" as petitioners argue (Pet. 28). Cf. *Fields* v. *United States*, 221 Fed. 242, 244 (C. C. A. 4), certiorari denied, 238 U. S. 640.

Finally, the petitioners were not prejudiced by the court's rulings, for the record shows that substantially the same information sought by these questions was given to the jury by other testimony. Thus, the sheriff admitted that about five days before the company decided to reopen the plant, he established headquarters in the company-owned Y. M. C. A. building (R. 550–551, 733) and that he had "put on a number of special deputies" (R. 551) of whom "fifteen to twenty-five" were quartered in the Y. M. C. A. building at Copperhill (R. 553), and petitioner Ballew was permitted to testify that "we couldn't step out of the house without being arrested and stopped on the highway" (R. 748). It is true that there was no evidence admitted to show that the deputies were paid by the Company but the evidence as a whole was evidently sufficient to

show the petitioner's theory of the dynamitings, for they concede that the trial judge correctly explained it in his charge (Pet. 30). Accordingly, the limitation upon cross-examination could not have substantially handicapped petitioners in presenting their case to the jury.

IV

Petitioners Anderson and Ellis, who did not make confessions, contend that there was insufficient evidence to support the verdict as to them.

The testimony of Freed Long, if believed, showed Anderson to have been a leader in the conspiracy. But Anderson attacks this testimony as insufficient to convict on the ground that Long was an impeached witness whom the court below characterized as "a spy and a paid informer" (R. 876). "The short answer to this is that the credibility of a witness is a question for the jury." *Glasser* v. *United States, supra.*

Against Ellis there was evidence that he took Long to a meeting of the conspirators on April 13 (R. 132, 137); that he worked around Anderson's office and ran errands for him (R. 611); that on the night of March 31, when the first dynamiting occurred, deputies became suspicious of Anderson's car, attempted to follow it, but were outdistanced; that the car reappeared at a picket station in Copperhill, but they lost it again; that still later, near Ducktown, the car approached them and when about 200 feet away it stopped

and a passenger got out; that the car then proceeded toward them and they stopped it; that petitioner Ellis was driving, and his wife and baby were with him (R. 152, 153, 158). This was about midnight (R. 152, 153). The deputies found a brace and bit in the car (R. 153, 154, 156, 157, 159, 160). About fifteen minutes later the first explosion of the power lines occurred (R. 157).[25] The poles had been bored with a brace and bit to make holes for the dynamite (R. 153).

This evidence, we submit, is sufficient to sustain Ellis' conviction. "The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser* v. *United States, supra.* And where a conspiracy is established, slight evidence connecting the defendant therewith may still be substantial and if so sufficient to sustain a conviction. *Galatas* v. *United States,* 80 F. (2d) 15, 24 (C. C. A. 8), certiorari denied, 297 U. S. 711; *Meyers* v. *United States,* 94 F. (2d) 433 (C. C. A. 6), certiorari denied, 304 U. S. 583.

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[25] It was for the jury to determine the credibility of Ellis' explanation of his presence on an unpaved side road at midnight; that they were riding around trying to "relieve the baby's colic"; that while riding around they had left the paved road and had driven off on a side road because his wife "had never been out on that road" and that the passenger had been a stranger, a hitch-hiker they picked up on the road (R. 606, 607).

CONCLUSION

The only question of any importance posed by the petition for writ of certiorari is whether the confessions of Woodward, Simonds and Hubbard were admissible in evidence. For the reasons which we have stated, we believe that the decision of the Circuit Court of Appeals on this, as on all other questions in the case, is correct. We accordingly do not concur in the petition but submit the question on the basis of the foregoing analysis of the case, designed to enable the Court to determine whether further review is warranted.[26]

Respectfully submitted.

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MARCH 1942.

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[26] Immediately prior to sending this memorandum to final print we received a copy of the brief filed on behalf of American Civil Liberties Union, *amicus curiae*, upon which, without longer withholding our present memorandum, we desire, separately, to comment.

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The United States of America

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SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES.

Immediately before sending our Memorandum to final print we received a copy of a brief submitted by American Civil Liberties Union, *amicus curiae*. We ask permission to submit the following comments upon it.

1. It is true that Sheriff Biggs and Agent Mann testified that Long had warned them of the dynamitings and that they took no measures to prevent

them (R. 467, 557) but together with this evidence, there should be considered the practical impossibility of patrolling on short notice the 38 miles of power lines leading into the Copper Basin (R. 467).

2. It is stated that "one of them [petitioners] was taken illegally from one state to another." Petitioner Ballew testified to that effect (R. 747). But two federal agents testified that Ballew was not arrested and went voluntarily to Copperhill to discuss the case, saying he would be glad to cooperate (R. 801–802, 806, 810–811, 814).

3. It is stated that, upon being arrested, five petitioners "were thrown into one cell seven feet by seven feet in what is known as the City jail," implying that petitioners were held there throughout this period except when they were being questioned. Not even the petitioners testified so broadly. Simonds said that on the night of his arrest "Felton Woodward, and maybe some one else" was in jail with him (R. 225). Later, Simonds testified that he spent "more than one night" with Woodward and Hubbard (R. 238–239). Woodward testified that there were four in one cell on two nights; at first he said it was Thursday and Friday, later he said it was Friday and Sunday (R. 250, 252, 264, 699–700). Hubbard testified that four of them were together Friday and Sunday nights (R. 203, cf. R. 215). Rhodes said that on Sunday night he, Woodward, Simonds, Queen

and Hubbard were placed in one cell (R. 734). That was the first night Rhodes was in custody (R. 733–734) and the only one about which he testified. Queen likewise testified that he was arrested Sunday and that five of the petitioners spent the night in a single cell (R. 681–682). But, not only is it clear that there was only one or at most two nights upon which any of petitioners were crowded in a small cell with four or five other persons; it is also certain that this Sunday night, on which, admittedly, five petitioners were crowded together, was after Woodward and Hubbard had confessed orally, and Simonds in writing; and it was the only night on which Rhodes and Ballew were held in custody prior to confessing (R. 176, 194–195, 274–275, 278–279, 285, 293, 294, 297, 323, 328, 682–684, 733–734). Moreover, although their evidence was contradicted, the record shows that the agents testified that Hubbard, Simonds, and Woodward were put in one cell on that Sunday night, after confessing orally, because they asked to be placed together to go over the circumstances of the dynamiting together and "get the details of their stories straight" (R. 188, 276, 326–327).

4. The brief does not give the evidence as to the manner in which petitioners were treated. It is said that "during this period the petitioners were given cold bologna sandwiches for breakfast, lunch and dinner." Rhodes, Ballew, and Queen

made no such claim on their own behalf. Simonds, Woodward, and Hubbard testified to that effect but several of the agents gave evidence that Simonds, Woodward and Hubbard had told them that the food was good (R. 188–189, 292, 325, 369); and the sheriff, his cook and two deputies testified that the same varied and substantial meals were served to the prisoners in custody and to the deputy sheriffs alike (R. 554, 566–569, 570[1]). It is said that "the petitioners * * * were denied anything to drink during protracted periods of questioning." Five of the petitioners made no such suggestion. Hubbard did (R. 207) but the agents denied that he had ever asked for a drink of water (R. 325, 360, 368, 385).

5. It is stated that the petitioners were taken before the Federal Agents and called "damn liars" and "damned lying sons of bitches." But petitioner Ballew, better informed than *amicus curiae*, testified "nobody cussed me out and I was not abused or threatened" (R. 758; cf. R. 747) and petitioner Queen made no claim of being cursed or called a liar. And, while it is true that each of the other petitioners did give testimony of being called a liar and of being cursed, it is also true that the agents who took part in the questioning specifically denied these allegations (R. 186, 276–277, 287, 292, 372, 278, 280, 295, 349, 389, 299, 360, 364, 299,

[1] In our principal Memorandum on the top line of page 16 appears a reference to page 670. In the final printing, one figure was changed; the reference should be to page 570.

324, 325, 346, 360, 801, 809). Likewise the testimony given by Woodward alone (R. 694) that Agent Plaxico had told him that the Federal Bureau of Investigation secured 98% of convictions and that he, Plaxico, would have state charges dismissed against Woodward, was denied by Plaxico (R. 791, 792). The agents also denied the petitioners' testimony that they were promised "paroles" and light sentences if they made confessions (R. 176, 291, 296, 327, 337, 388, 274, 277, 287, 295, 317, 388, 280, 295, 296, 330, 281, 324, 347, 359, 361, 371, 386, 524, 810, 518, 523, 821).

6. In our principal memorandum we have discussed the testimony as to whether or not a reduction in bail had been promised (p. 19). Agent Mann denied that he had suggested bail at $1,000 or asked that Woodward's bail be reduced (R. 388) but the presumably disinterested testimony of Commissioner Anderson may be the more persuasive (R. 217–218, 221). The agents also testified, however, that no promises of low bail were made to those petitioners who claimed there had been such an offer (R. 176, 277, 317, 337).

7. The brief states categorically that "Men thus held were told by the agents that all they had to do was 'sign this paper' to go free," and cites "R. 753; etc." Ballew gave such testimony (R. 752–753, 761) and perhaps Queen's testimony (R. 683, 684) will bear that meaning. But there is not the least warrant for stating that the other confessions were obtained by any such misrepresentation.

And, the testimony of Ballew and Queen was contradicted (R. 518, 523, 794, 820–821, 803, 812–813).

8. The brief also describes these men as "denied the right to seek advice * * * from counsel." There was conflicting evidence as to whether Simonds and Hubbard asked for and were refused counsel; each claimed to have made the request (R. 208, 229–230, 239) but the agents denied that Simonds had requested counsel and testified that Hubbard after making the request changed his mind instantly (R. 175, 290, 325, 327, 359, 368, 372, 388, 346–347, 352; cf. R. 325, 359, 368, 385). There is not one word of testimony to warrant the assertion that Woodward, Ballew, Queen, or Rhodes was refused the right to counsel prior to confessing.

9. In criticising the decision below the brief states that "It glosses over the fact that armed deputies stood by at the questionings." No reference to the record is given and we find no evidence of this fact in the record.

Respectfully submitted.

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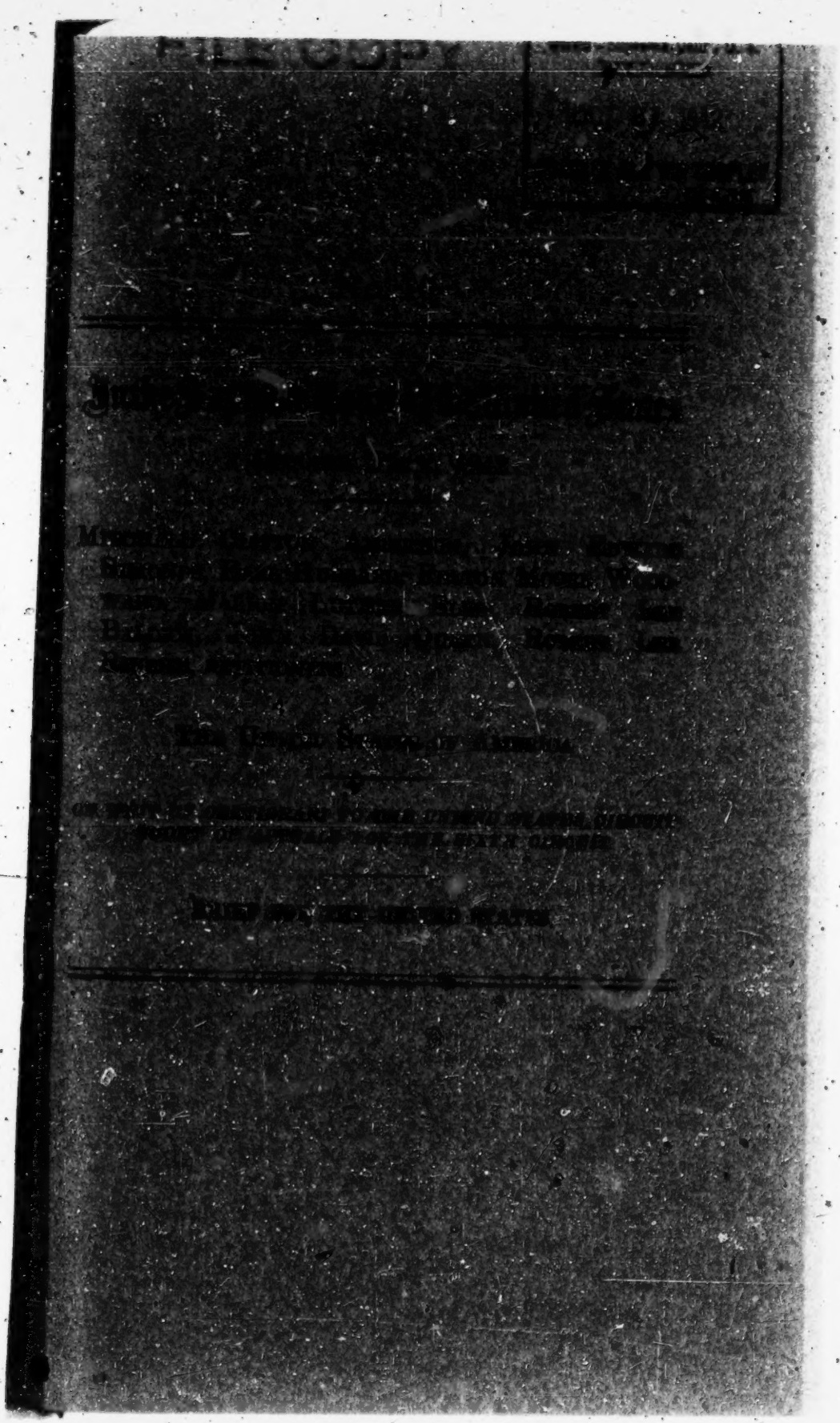

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 10

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the circuit court of appeals (R. 868–884) is reported in 124 F. (2d) 58.

JURISDICTION

The judgment of the circuit court of appeals was entered December 4, 1941 (R. 867). The petition for a writ of certiorari was filed January 9, 1942, and granted April 6, 1942. The jurisdic-

tion of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the confessions of petitioners Simonds, Woodward, Hubbard, Queen, Ballew, and Rhodes were admissible in evidence against them.

2. Whether, if a confession was erroneously admitted in evidence, the error is ground for reversal as to others than the person who confessed.

3. Whether the Government was required to prove the participation of petitioners Queen, Ballew, and Rhodes in the conspiracy by evidence independent of their confessions.

STATEMENT

Petitioners were convicted [1] (R. 862–863) in the District Court of the United States for the Eastern District of Tennessee upon an indictment (R. 2–22) charging a conspiracy to damage property of the Tennessee Valley Authority, a corporation in which the United States is a stockholder, in violation of Sections 35 (C) and 37 of the Criminal Code, as amended, 18 U. S. C. 82, 88. Peti-

[1] At the end of the Government's evidence, the court directed verdicts of not guilty as to seven of the defendants: Van D. Jones, James Gordon Parr (R. 579), Tate C. Green, Leslie Bryant Green (R. 580), Clyde L. Huffman, William Clint Huffman, and Benjamin Cross (R. 581). Five of the defendants, John E. McGhee, Joel Martin Simonds, Thomas Wayne Henry, Meggs Collins, and William Rans Smith, were acquitted by the jury (R. 862–863).

tioner Anderson was sentenced to imprisonment for two years and to pay a fine of $5,000 (R. 31–32); petitioner Ellis to imprisonment for fifteen months and costs (R. 38); and petitioners Simonds (R. 32–33), Woodward (R. 33–34), Hubbard (R. 34–35), Queen (R. 35–36), Rhodes (R. 36–37), and Ballew (R. 39–40) to imprisonment for two years and to pay fines of $1,000. The judgments of conviction were affirmed by the circuit court of appeals (R. 867).

A. THE EVIDENCE EXCLUSIVE OF THE CONFESSIONS

On July 14, 1939, the International Union of Mine, Mill and Smelter Workers, affiliated with the Congress of Industrial Organizations (R. 698, 740), called a strike at the Tennessee Copper Company mines at Copperhill, Tennessee (R. 137, 689). Petitioner Anderson was the national representative and organizer for the Union (R. 614), and the other petitioners were members who were out on strike (R. 606, 652, 670, 681, 698, 734, 745). The plant was closed, but reopened six weeks later while the strike was still in progress (R. 550). Meanwhile, the sheriff of Polk County had appointed a number of special deputies (R. 551, 553) and established headquarters at the company-owned Y. M. C. A. building at Copperhill (R. 247, 551–552, 733). At the time of the crime, 18 or 20 deputies were quartered there (R. 171–172, 307; cf. R. 552–553, 635).

The strike continued through April 1940. At that time two transmission lines belonging to the Tennessee Valley Authority led into that part of Polk County, Tennessee, and Fannin County, Georgia, known as the Copper Basin. The lines were supported on wooden poles and steel towers. One line and its feeders was known as the Parksville, or Ocoee line; the other as the Blue Ridge line. From these lines the Company obtained power for its operations (R. 125–129).

Shortly after midnight on April 1, 1940, both lines were dynamited, interrupting the service (R. 125, 127).

On April 13, 1940, one Freed Long, who was the principal witness for the Government, attended a meeting at petitioner Anderson's office in Ducktown.[2] Long had a withdrawal card of the union but had helped on the picket line (R. 132, 137, 594–595). He was driven to the meeting in Anderson's car by petitioner Ellis (R. 132, 137). There Long met Anderson, John McGhee, Clint and Clyde Huffman, Rans Smith, and Felton Woodward (R. 132–133, 138). Woodward, who is a petitioner here, and the Huffmans, who are not, left as Long arrived, after talking with Anderson in a tone inaudible to Long; but the others remained (R. 133, 138). Anderson then told Long that "They were going to try to shut the plant down and wanted to kind of jamb up the mine

[2] Long testified that this was not the regular union office (R. 137).

a little bit and wanted me to help them do that; the plans were to go down in the mine and blow up the magazine, they were going to shut the power off too, somebody was" (R. 133, 138–139). Long's part was to go down with them into the mine (R. 133–134). "Nothing was said about blowing the towers there that night or that afternoon, they just said the power would be off" (R. 133). At 8:54 p. m. the next night, April 14, 1940, a steel tower on the Parksville, or Ocoee, line was dynamited, interrupting service on that line (R. 125, 127–128). About thirty minutes later a steel tower on the Blue Ridge line was dynamited, but the power line did not go down and service on it was not interrupted (R. 128). The record does not show whether any effort was made to blow up the mine.

Long also testified that on April 18, 1940, he attended another meeting in Isabella, Tennessee. Petitioners Anderson, Woodward, Hubbard, and Simonds were among those present (R. 134, 139–140). "They talked about blowing up the mines and shutting off the power again" (R. 134). Anderson wanted the towers and poles blown up (R. 134). Simonds was to "look after" the Blue Ridge line, and Woodward, the Parksville, or Ocoee, line (R. 134, 142). As to the mine, since Long was not experienced in mining, it was decided that he would stand guard outside the mine "to keep them from being surprised going in or out" (R. 135).

After this meeting Long informed B. E. Biggs, the sheriff of Polk County, that the Parksville and Blue Ridge lines, as well as the copper mine at Isabella, would all be blown up at 1:20 a. m. on April 24th (R. 557, 563, 564). The sheriff testified that he had stationed men at the mine (R. 563–564), but that he had been unable to patrol the power lines, each of which extended about 10 miles through rough country (R. 467, 563). On April 24th, between 1 a. m. and 2 a. m., towers on both the Blue Ridge line and the Parksville line were dynamited; on both lines service was interrupted (R. 125, 128).

In addition to Long's testimony the chief evidence for the Government was the confessions presently discussed, but there was other corroborating circumstantial evidence. Phelps, an employee of the Hercules Powder Company in Bessemer, Alabama, testified that a "John M. Cash" had bought dynamite and fuse from him on April 9, 1940 (R. 510–511). Casings and burned fuse found in the vicinity of power line towers showed that the same kind of dynamite had been used to destroy them (R. 148–151, 155, 162–164, 426–427, 478–479, 510–511). Phelps identified Woodward as "John M. Cash" (R. 511–512). On Monday morning following the dynamiting on

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One Parsons, who assisted Phelps, corroborated Phelps' account of the sale and identified Felton Woodward's brother, Sweat Woodward as "John M. Cash" (R. 515–516).

Sunday night, March 31st, paper covering for dynamite was found at the Rogers Ferry Bridge (R. 448, 151–152, 156, 162) where, according to Woodward's confession (R. 450), he had stopped his car and had given one of the others one-half of the dynamite he had and 250 feet of fuse to blow up the Parksville line. Simonds told Agent Roche how one of the men with him had dropped into the river the auger used to bore holes for the dynamite in the wooden poles blown up on March 31st (R. 417); and, following Simonds' directions, F. B. I. agents, Roche and Mann, and two deputy sheriffs retrieved an auger from the river at the spot indicated by Simonds (R. 417, 442, 466). Simonds also asked the agents whether bloodhounds had been used in an effort to track those who dynamited the towers on April 14, 1940 (R. 417). Bloodhounds had been used but would not follow the tracks, which were plainly visible (R. 418; 571). When Simonds was so informed, he explained that he had wrapped his feet in gasoline soaked rags that night, knowing that no dog could then follow his track (R. 418). There was also evidence that Ellis, who was closely associated with Anderson (R. 587, 611), had been driving Anderson's car on back roads on the night of March 31st, when the first dynamiting occurred (R. 152–153). He was stopped about fifteen minutes before the first explosion and in the car were a brace and two bits; the larger bit measured about an inch and a quarter (R. 152–153, 154,

157). Later it was found that the wooden poles dynamited that night had been bored with a brace and bit to make holes for the dynamite (R. 153).

Petitioners attempted to impeach Long by testimony that he asked for a bribe to testify favorably to them (R. 143–145, 585, 590, 629–630, 646–647). They offered numerous character witnesses. Woodward had witnesses to show that he was in Atlanta, Georgia, when "John M. Cash" bought the dynamite in Bessemer (R. 648–651). Ellis explained that he was driving around on the night of March 31st to "relieve the baby's colic" (R. 606–607). A Mrs. Carter testified that Ballew was farming on certain days on which, according to his confession, he was arranging the explosion (R. 766–767). With these exceptions, the petitioners offered no alibis.

B. THE CONFESSIONS AND THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE

The following evidence as to the confessions is undisputed:

On April 24, following the last explosion, Sheriff Riggs began to take into custody the men he suspected of the dynamitings because Long had named them in connection with meetings at which the dynamitings were alleged to have been planned (R. 192, 428). The sheriff made the arrests on state charges (R. 172–173, 175, 304, 540, 542) on his own initiative and not at the request of the Agents of the Federal Bureau of In-

vestigation" (R. 170, 175–176, 303–304, 332, 353–354, 441, 467, 542). It is not clear how many men were arrested; the highest number shown in the record is that the sheriff arrested all twenty-one defendants (R. 540). Although the dates of all the arrests were not exactly specified, it appears that Simonds, Woodward and Hubbard were arrested on April 24th (R. 200, 223, 247); Queen and Rhodes, on April 28th (R. 682, 733–734); and Ballew, on April 30th (R. 746). The sheriff had no warrants, except possibly for one or two men; apparently he believed that none was required by local law (R. 546, 550). No preliminary hearings were conducted until April 30th when the defendants were for the first time taken into custody by federal officials and arraigned before a United States Commissioner on a complaint filed the previous day (R. 170, 217, 261, 549–550).[4]

While the defendants were held in the custody of the sheriff on state charges, they were questioned at the Y. M. C. A. in Copperhill by Agents from the Federal Bureau of Investigation (R. 170–171, 307).[5] Simonds, Woodward, Hubbard,

[4] After the complaint had been filed in the District Court of the United States the sheriff arrested five or six men at the request of Special Agent Roche (R. 170). But that occurred after the confessions were made and has no relation to them.

[5] Ballew was arraigned on the "2nd or 3rd," having signed his confession May 1 (R. 756).

[6] The agents who made the investigation and whose testimony upon the confessions is material were Plaxico, Roche,

Queen, Rhodes, and Ballew made confessions setting forth in detail how the dynamitings were planned and executed.[5] At the trial appropriate objections were made to the use of the confessions as evidence on the ground that they were involuntary (R. 167, 775–776). The court conducted a preliminary examination in the absence of the jury (R. 168–403) and much the same testimony was repeated in the presence of the jury.[6] The testimony was sharply conflicting as to the nature and extent of the questioning and the treatment that the petitioners received while they were in custody.[7] In our memorandum in response to the petition for certiorari (pp. 11–25), we summarized the conflicting testimony so that a synopsis of the record might be available. Since the triers of fact found the confessions to be voluntary and refused to credit the petitioner's evidence, we set forth hereon the disputed points only the evidence for the Government.[8]

Maine, Hevron, Morgan, Whitten, Lunsford, and McCabe (R. 109, 288, 330).

[5] Simonds (R. 412–415); Woodward (R. 445–462); Hubbard (R. 501–505); Queen (R. 518–521); Rhodes (R. 524–526); Ballew (R. 527–529).

[6] By stipulation the evidence as to the admissibility and credibility of the confessions of Queen, Rhodes, and Ballew was heard but once and in the presence of the jury (R. 516–517).

[7] In setting forth a detailed statement of the evidence concerning the circumstances under which the petitioners confessed, we shall rely primarily upon the preliminary exam-

Simonds.—Simonds was arrested between three and four o'clock on the afternoon of Wednesday, April 24th (R. 223–224, 234; R. 652). He was not questioned that afternoon or evening.

On Thursday, April 25th, about 2 o'clock, Simonds was questioned for the first time; Plaxico, Roche, and Mann, F. B. I. agents, interrogated him for a total period of about two hours (R. 172, 173–174; 274, 289, 309, 315, 326, 336; R. 490, 786–787).[9] Plaxico and Roche also questioned him that evening for two hours beginning at seven o'clock (R. 174, 175, 274, 283; R. 411, 787).[10]

On Friday morning, Plaxico questioned Simonds for about an hour; perhaps Roche and Mann were present (R. 311–312).[11]

On Saturday, Agent Morgan questioned him for half an hour or less (R. 387, 397) as did Plaxico (R. 315, 490).

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nation and shall set forth following a semicolon in the record reference any corresponding page in the record of the testimony heard by the jury. Inconsistencies between the two will be noted in the margin.

[9] Apparently Roche was there for the full two hours (R. 172–174); Plaxico for part of the time, forty-five minutes together with Roche and Mann (R. 289, 315); and Mann for one hour, together with Roche (R. 326, 336).

[10] Roche was the only agent to mention this period of questioning. Even from his testimony alone, it is not clear whether Mann was present. Compare R. 283 with R. 429.

[11] Plaxico testified that he "thought" that Roche and Mann were with him (R. 314–315). But Roche and Mann each testified that he did not question Simonds between Thursday and Sunday (R. 176, 325).

On Sunday, Plaxico and Roche questioned Simonds (R. 176, 274–275, 289, 411, 787). "We went over the entire case with him, and pointed out the discrepancies in his story and the information we had developed on investigations which knocked down his alibi, and out of a clear sky he said 'well, I want to tell you I am guilty'" (R. 291). This took about an hour (R. 274–275). Mann came in while Simonds was making his oral confession (R. 326). Petitioner Hubbard had been present all this time and petitioner Woodward came in shortly after; both were present when Roche took Simonds' written statement, and all of them described "their entire activities" (R. 168, 176, 178, 297; R. 411–412).

Plaxico, Roche, and Mann each denied Simonds' testimony that he had asked them for counsel (R. 175, 290–291, 327, 372; R. 432–433, 473, 787–788, 791, 820).[1] Each testified that no threats or promises had been made to obtain the statement (R. 274, 291, 327, 337; R. 411, 787, 791) and each specifically denied that he or anyone in his presence had threatened a severe sentence or promised a light sentence (R. 177, 290, 291, 327, 337; R. 787), a low bond (R. 177, 277, 317, 327, 337; R. 791), or probation or parole (R. 274,

[1] Morgan, the other agent who questioned Simonds, denied that such a request was made of him, thus negativing the possibility that Simonds was mistaken as to the identity of the agent to whom he made his request (R. 388).

277, 287, 296, 317, 337; R. 791).[14] Each also denied cursing Simonds (R. 186, 276, 289, 290; R. 472, 787, 791, 820) and testified that, contrary to Simonds' assertion, Mann had never shown a gun or threatened to strike him (R. 277, 372) and that Mann was not even armed (R. 277). Morgan was the only other agent to question Simonds,[15] and Simonds admitted that Morgan said nothing "out of the way" to him (R. 660).

Since they had not held Simonds in their custody, the F. B. I. agents were unable to testify in detail concerning the food given Simonds to eat. Agents Roche and Hevron both testified, however, that they understood that the same regular meals were served to the men in custody as were given to the deputy sheriffs (R. 174, 188–189, 355; R. 429–430, 433, 435–436, 440–441).[16]

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[14] A deputy sheriff, Campbell, testified that he had told some of the men in jail that Plaxico would recommend a parole for "those boys that come clean," but he could not remember when the statement was made (R. 272–273) and Simonds did not claim to have heard it. Plaxico denied that he had made such a statement to Campbell but testified that Campbell had asked him to recommend leniency and that he had replied that all he could do would be to tell the facts (R. 318). This talk between Plaxico and Campbell took place after the confessions had been signed (R. 318–319).

[15] A day or two after he had confessed, Simonds was present when Whitten took a statement from Ballew. Whitten testified that he did not offer Simonds inducements or threats (R. 372, 388).

[16] This understanding was confirmed at least in part by Joel Simonds (not the petitioner) who was also in custody and who said that he ate with the deputies (R. 637).

Several of petitioners, including Simonds, complimented the agents on the way they had been treated and said that the food was good (R. 188–189, 196, 292; R. 435, 476; R. 787). Before the jury, but not on the preliminary examination, the sheriff and two deputies testified that the men in custody ate the same food as the deputies, that the food was carried to the jail when necessary,[17] that the men in custody usually slept at the Y. M. C. A. "in the same kind of beds" that were furnished the deputies, and that no one was forced to spend more than two nights in jail (R. 554, 567–569; see also R. 670). Simonds had no visitors, but Mrs. Simonds knew that he was being questioned (R. 178–179, 287); and the Union apparently was prepared to give legal aid.[18]

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[17] Hensley, the cook at the Y. M. C. A., testified (R. 570) that "The deputy sheriffs ate the same meals as the prisoners. They had the same thing as the guards ate. We should run a regular course of meals through the week and chicken on Sunday, roast beef, stew, steak and onions or something like that. We had coffee about 19 cents a pound. I made it in an urn and drank it myself and these men drank the same sort of coffee I did. I never put anything in the coffee. I have carried food down to the city jail from the YMCA myself."

[18] Counsel had been retained by the Union "two or three weeks before this matter arose" (R. 768). One attorney testified that he "made considerable effort to contact the men in custody who I considered to be my clients, before I was permitted to see them" (R. 768) but apparently he was speaking of a time after the complaint had been filed (R. 768–769). The record does not show that counsel made any effort to obtain their release from custody prior to the day upon

Hubbard.—Hubbard was arrested on Wednesday evening, April 24th, and was taken first to the Y. M. C. A. and then to the county jail in Copperhill (R. 200–201; R. 666–667).

Plaxico, Roche, Mann, and Hevron questioned Hubbard on Thursday afternoon for about two hours (R. 181, 296–297, 309, 322–323, 335, 345, 351, 434, 490, 500; R. 788). Plaxico and Roche questioned him for two hours that evening (R. 282–283; R. 788).

On Friday, in the evening, Whitten and Lunsford interrogated him from seven-thirty to nine-thirty (R. 358–359, 362–363, 367, 375, 376; R. 505, 506–507). During the day, Morgan, and perhaps McCabe, asked questions for fifteen or twenty minutes or longer (R. 384, 391),[19] and Roche questioned him for about 45 minutes (R. 434).

On Saturday, McCabe questioned Hubbard for two hours (R. 497). Morgan asked occasional questions in the afternoon (R. 384, 392). Plaxico, accompanied by Roche on one occasion, interrogated him twice, each time for about half an hour (R. 182, 313, 314–315; R. 434, 490–491).

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which they were arraigned (R. 768–770). Campbell, Chief Deputy Sheriff of Polk County (R. 268), testified that on one occasion Mr. Hunt and Mr. Townsend (petitioners' counsel) came to Copperhill to see petitioners and Campbell told them that "he would rather the Sheriff would be there before he talked to him [them?]" (R. 271). The record does not show whether counsel waited or made any attempt to see Sheriff Biggs.

[19] McCabe did not mention this interview.

On Sunday, Hubbard was present while Plaxico and Roche talked to Simonds; Hubbard admitted his guilt immediately after Simonds (R. 194–195, 275, 293, 297, cf. 323–324; R. 435, 788). Later that evening after Woodward also had confessed, the three were placed in jail together at their own request "to get the details of their stories straight" (R. 188, 276, 326–327). Hubbard's confession was written out as he repeated it to Whitten and Lunsford on April 30th in about two hours (R. 364–365, 368, 379; R. 506).

Each of the agents who questioned Hubbard denied Hubbard's testimony that he was mistreated. In response to his assertions, they stated that during the periods of questioning Hubbard wore his glasses (R. 183, 299, 324, 346, 359, 368, 387; R. 435, 491, 497, 506, 789, 791); was allowed to smoke and smoked almost continuously (R. 299, 324, 325, 345–346, 359–360, 369, 385; R. 435, 497, 506, 788, 791–792, 808), was not cursed (R. 186, 281, 299, 324, 325, 346, 360, 372, 386; R. 492, 788–789, 800) or pushed back in his chair (R. 325, 346, 360, 369, 386). No threats or promises, and no offer of a light sentence or parole, were made to him (R. 281, 324, 347, 359, 361, 371, 377, 386; R. 506); he was not refused water (R. 325, 360, 368, 385) or offered a good meal if he would make a statement (R. 369; R. 809; cf. R. 385, 394).

Hubbard had a cold (R. 183) and when he complained of a headache on Saturday the agents wanted to call a doctor but Hubbard said that he

would be all right and they gave him an aspirin (R. 393, cf. R. 370–371). The doctor, who was summoned later, found that Hubbard had an ordinary cold and no fever; he gave him some capsules "what we usually give for common colds" and a laxative (R. 199; cf. 183; R. 565).

The general testimony showing that the defendants had been properly fed by the Sheriff and were given fit sleeping quarters was applicable to Hubbard as well as to Simonds. See pp. 13–14, *supra*. Like Simonds, Hubbard thanked Plaxico for the way he had been fed and treated (R. 300, 369–370, 441, 491; see also R. 325). On one occasion Hubbard asked for an attorney but instantly changed his mind, saying that he did not need one because he had done no wrong (R. 346–347, 352; cf. R. 325, 359, 368, 385; R. 473).

Woodward.—On Wednesday, April 24th, Woodward was taken into custody and lodged in the city jail for the night (R. 247–248; R. 690). He was not questioned that day (R. 247–248; R. 690).

On Thursday, April 25th, Roche, Mann, and probably Hevron, questioned Woodward for two hours (R. 187, 278, 279, 282, 328, 336, 348, 353).[20]

[20] Hevron testified that he and Mann did the questioning (R. 348, 353). Roche said that he and Mann were present (R. 279, 282). Mann said on the preliminary examination that he was present but was not asked who was with him (R. 328), and before the jury said that Plaxico was with him (R. 467). Woodward testified that it was Mann and one other (R. 249, 252) but he identified Hevron as Mann (R. 255).

Before the jury it also appeared that Roche questioned Woodward again between seven and nine o'clock that evening (R. 436).

On Friday and Saturday, Woodward was not questioned, unless Saturday was one of the two unspecified occasions on which Morgan asked Woodward questions for about fifteen minutes (R. 388–389).[2]

On Sunday Woodward was brought into the room at the request of Simonds and Hubbard after they had confessed and, upon being told of their confessions, admitted his guilt (R. 187, 195, 274–276, 293–294, 297, 323). At that time Mann, Plaxico, and Roche were present, as were petitioners Hubbard and Simonds who took the initiative in questioning Woodward (R. 293).

On Monday, Woodward's statement was taken by Mann, McCabe, and Hovron (R. 187, 294, 348, 354). It consisted of five typewritten pages, single spaced, and much of the time was spent in typing it, because Agent Mann was not a rapid typist (R. 329, 343; R. 445–462, 470, 497–498) and because Woodward had trouble recalling details concerning the times of the dynamitings and meetings which he attended (R. 343; R. 470). This took from about 11 a. m. until 2 p. m., and after recess for lunch, from about 3:30 p. m. until 7 or 7:30 p. m. (R. 341, 354; R. 470, 497–498, 499–500).

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[2] Before the jury Morgan did specify Saturday as the day on which he questioned Woodward (R. 818).

The agents specifically denied Woodward's testimony that promises had been made to him and that he had been threatened. Thus, Plaxico testified that he did not promise Woodward that he would "be taken care of" (R. 296, 330, 390), that a low bond would be arranged (R. 317, 337; R. 469),[22] or that he would be "paroled" (R. 280, 295, 296, 317–318, 330; R. 469). Similarly, Plaxico denied that he had offered to have a state charge for a felonious assault dismissed (R. 280, 296; R. 789, 792). The agent who had questioned Woodward said that no one told Woodward that the agents were in Copperhill to break the strike and "get" Anderson (R. 280, 295, 330, 349, 389–390; R. 433); no one threatened Woodward or cursed him as a liar (R. 279–280, 281, 295, 349, 357, 389, 390; R. 500, 800, 818, 820–821). On the contrary, he was told that he need make

[22] The United States Commissioner, before whom petitioners were arraigned on May 1, 1940, on federal charges, testified that Agent Mann requested that he fix the bond on the defendants who pleaded guilty at $1,000 and on the others at $2,000 (R. 217–218; R. 573–574). The attorney for the defendants put himself on the stand before the jury and corroborated this (R. 644). The Commissioner also had a note that "May 3, 1940, * * * at the request of Mr. Mann, Agent, the bond of Felton Woodward was reduced from $3,000 to $1,000" (R. 218). Mann denied positively that he had made any such recommendations (R. 337–338; R. 469–470). Roche testified, and the office records were introduced to support him, that Mann had been in the Knoxville office all day on May 3, 1940 (R. 437, 475–476). The Commissioner was then recalled to testify that Mann had made the request before May 3d and that the bond was reduced on May 3d (R. 574).

no statement (R. 193; R. 445), and when his written confession had been typed Mann read it over to him slowly and Woodward said it was the truth (R. 357).

The general evidence showing that the men in custody were supplied with proper food and lodging has been set forth above in our summary of evidence concerning Simonds; it is equally applicable to Woodward. And as is also true of the other petitioners, there was no showing that Woodward sought and was refused permission to see friends, relatives, or counsel.[23]

Rhodes.—Rhodes was arrested Sunday night around 8 o'clock and spent the night in jail in the cell with Woodward, Simonds, Queen, and Hubbard (R. 733–734). At 10 o'clock on Monday he was questioned for an hour and a half or two hours by Agents Whitten and Lunsford, each of whom denied that he had called Rhodes a liar (R.

[23] Sid Howell, petitioner Woodward's father-in-law, testified before the jury, but not on *voir dire*, that on Thursday, April 25, he went to the Y. M. C. A. to see Woodward, and deputy sheriff Rose said "there wasn't anyone allowed to see him at all"; that he went again on Friday, April 26, and another deputy, Creed Brock, told him "that no one was allowed to see him at all, that they was questioning him" (R. 642); and that on Saturday, inside the City Hall in Copperhill, he was permitted to talk to the Woodward brothers through a peephole (R. 643). Sheriff Biggs, however, testified, "I didn't refuse to let Sid Howell see Felton Woodward, but he possibly was not allowed to see him while he was being talked to by me or some of my officers" (R. 555).

801, 809), that either had promised to "take care of him" (R. 801, 809) or that either had promised or threatened anything to obtain his statement (R. 524, 810).[24]

Queen.—Queen testified that on Sunday afternoon, April 28, when he was arrested, his baby was seriously ill; that he and four of the others were put in one cell that night without supper (R. 681–683), and that on Monday, about eight in the evening, he signed a paper, not knowing what was in it, "because the F. B. I. men, Mr. Mann and Mr. McCabe was there and after they got through talking with me they got up and turned their backs and McCabe wheeled around and said sign this right here, I guess you are in a hurry to get back to your wife and baby" (R. 683, 684).

The agents denied Queen's assertions (R. 794–795, 820–821). McCabe took the statement in longhand; Hevron and Mann were present (R. 517–518, 521–523). They testified that no promise or threats of any sort were made to obtain Queen's confession (R. 518, 522, 523; R. 800, 821) and that on the contrary Queen said "he was anxious to give a statement, that he thought he had been misled" (R. 523).

[24] Rhodes also said that he "couldn't see a lawyer or anybody" but apparently was speaking of the day on which he pleaded guilty (R. 737). The agents were not asked specifically whether Rhodes asked for an attorney before the confession was signed.

Ballew.—Agents Lunsford and Whitten both testified that when they first talked to Ballew he had not been arrested (R. 530, 535–536, 801–802, 811, 814). Deputy Sheriff Clyde Dale had taken them to see Ballew at Edna Carter's house (R. 530, 535, 801, 802, 810), and they all went to Copperhill to talk because the Carter house was full of people (R. 806, 814–815). "When he came out [of the house], at our request, on his own free will and acquiescence, he agreed to accompany us to Copperhill where we could talk to him and take our time. He said he would be glad to cooperate in any way since he knew nothing at all about the matter at that time" (R. 810–811; cf. R. 530, 532, 536, 538, 801–802, 807). No handcuffs were used (R. 802, 811). At the Y. M. C. A. they talked for about an hour (R. 531, 537). When they were finished Ballew himself asked to stay at the Y. M. C. A. to talk to the sheriff although the agents offered to drive him home (R. 817; see also 533, 538, 539, 806, 817). That night the sheriff took him into custody and the next morning he was taken to the courthouse where he signed a confession (R. 803). At the courthouse the next day, the agents "had not talked [to him] over four or five minutes" when he said "get your paper and typewriter, or words to that effect" (R. 812). Simonds was also there and the two "talked about their part in the dynamiting, and after they discussed the case between themselves" Ballew "just told us [Lunsford and Whit-

ten] about it, and voluntarily signed" his statement (R. 803), after reading it and having it read to him (R. 803, 812–813). The agents denied that they had hidden the paper or told Ballew that he was signing a release (R. 803, 813). Ballew admitted "nobody cussed me out and I was not abused or threatened" (R. 758; cf. R. 747).

After the close of the preliminary examination, the court ruled that the confessions were admissible in evidence (R. 403, 775–776). The court stated that there was "no showing so far as duress is concerned, that they were forced to make any statement that was an involuntary statement" and that the statements were not made "as the result of any promise of reward" (R. 403).

The court also submitted to the jury the question whether the statements were voluntary and charged that the confessions should not be considered unless the jury first found that they were freely and voluntarily made (R. 831). He discussed the rule and relevant considerations in great detail (R. 831–834). The jury apparently believed the agents and not the petitioners' testimony, for they found the petitioners guilty.

SUMMARY OF ARGUMENT

I

A. A "voluntary" confession is admissible in evidence but a confession will be excluded that was coerced. This familiar criterion serves two purposes. The first is to admit only evidence

whose testimonial worth is guaranteed by the normal will of an innocent man not to incriminate himself falsely. A confession is not involuntary in this sense, therefore, unless it was made under such circumstances that the defendant's will was overcome by promises, threats, or mistreatment, thus rendering his involuntary statement too unreliable for evidence. The second purpose is to give effect to the aim of the Fifth Amendment to protect the right of the individual to personal security, personal liberty, and the privacies of life, at least until convicted of crime. A confession is not involuntary in this second sense, therefore, unless the state exerted physical or moral compulsion to extort the confession, or pressed the defendant with accusatory questions which were themselves coercive because fear or physical debility had bereft the defendant of power to assert his will. If an extra-judicial confession is "voluntary" within these two tests, then it is admissible regardless of whether it was made in the course of an examination by the police, or during the subsistence of lawless acts such as wrongful delays in arraignment. Police misconduct is relevant in determining the ultimate fact that a confession was voluntary or involuntary, but it is not *per se* a ground for exclusion.

B. The issue of whether a confession is voluntary is a question of fact. The trial court has far greater opportunities to decide it accurately than an appellate court. The trial court is closer to

the events and sees the actors; therefore it can recapture more easily than an appellate court the nuances of the events and the atmosphere in which they occurred. Moreover, the ultimate conclusion often must depend upon the personality of the defendant and his reaction to the circumstances, and only the trial court has the opportunity to observe the defendant. It will not do in all cases, therefore, to limit the function of the trial court to that of resolving direct conflicts in the testimony. The trial court should be allowed considerable discretion in finding the ultimate fact of whether a confession was voluntary, and its conclusion should be set aside only when it is clearly against the weight of the evidence.

C. Applying these principles to the instant case, we think it is clear not only that the trial court did not abuse its discretion but that its ultimate conclusion was inescapable.

There was ample testimony to show that petitioners made their confessions deliberately and that they were offered no promises or threats. The evidence for the Government was emphatic that the Special Agents from the Federal Bureau of Investigation did not abuse the petitioners or offer them any indignity; and although there was less certainty in the evidence concerning how the sheriff housed and fed the petitioners, it is clear that their claims of mistreatment were exaggerated and that they suffered no serious discomfort on this score.

The confessions were not spontaneous but the Special Agents' description of the events establishes that they were nonetheless voluntary. The questioning consisted only of hearing the petitioners' stories, of pointing out to the petitioners a few days later that investigation had disproved their explanations, and of taking the statements made by the petitioners, without urging or even questioning, as soon as they realized that the agents could not be deceived.

The atmosphere in which the questioning occurred should not alter the conclusion. Three of the petitioners were unlawfully detained for four days before they confessed. The conduct of the sheriff in holding them so long without arraignment is not to be condoned but neither it nor the fact that petitioners saw neither friends nor counsel seems likely to have seriously affected their wills. A number of them were in custody together; they must have realized that their friends and families knew them to be in custody. It is significant, therefore, that none of the petitioners even suggested that he sought and was denied leave to communicate with them. The petitioners were held during a strike in a company building surrounded by deputy sheriffs who had been guarding company property. But the petitioners were not questioned by the deputies and did not testify that the deputies bullied them or that the deputies' presence put them in fear. There is nothing to show that these intangibles affected the peti-

tioners, and the sequence of events is convincing that the petitioners confessed almost spontaneously, not from fear and oppression, but because having learned that investigation had destroyed their alibis, they wished to ease their minds. We submit, therefore, that there is no substantial probability that the will of any petitioner was bent by the circumstances to the will of the Government agents that he should make a confession, and that the trial court did not err in ruling that the confessions were admissible.

II

Even if the trial court erred in admitting one or more of the confessions, the error would not be ground for reversing the conviction of any but the petitioner whose confession was erroneously admitted. The charge made it clear that the confession of one defendant was not evidence against the others and it is not to be presumed that the jury failed to follow the court's instructions. Consequently no petitioner can predicate a claim of error upon the improper admission of a confession which was not received in evidence against him.

Furthermore, none of the petitioners was prejudiced by the admission in evidence of another's confession implicating him. Anderson and Ellis, who did not confess, have abandoned their attack upon the sufficiency of the evidence, and the proof of their guilt was so overwhelming that the cumu-

lative effect of mentioning their names in cross-examination from the confessions can have been of little consequence. And the confession of each of the other petitioners, together with the corroborating proof, so completely establishes his guilt that he could not have been prejudiced even though another's confession implicating him might have been erroneously admitted.

III

There was ample proof in addition to the confessions to render adinissible the confessions of Rhodes, Queen and Ballew and to support their convictions. The rule that a confession must be corroborated requires only that there be other evidence of the *corpus delicti*. In a conspiracy case the *corpus delicti* is the agreement, and it was proved by the testimony of Freed Long and the description of the explosions. There is no necessity to prove by evidence outside of the confession that the defendant committed the crime.

ARGUMENT

I

THE CONFESSIONS OF PETITIONERS SIMONDS, HUBBARD, WOODWARD, QUEEN, RHODES, AND BALLEW WERE VOLUNTARILY MADE AND THEREFORE WERE ADMISSIBLE IN EVIDENCE AGAINST THEM

INTRODUCTORY

It is familiar and settled law that a "voluntary" confession should be admitted into evidence, and

that a "coerced" confession should be excluded. Whatever the logic of the criticisms,[26] this test is applicable whether the due process clauses of the Fifth and Fourteenth Amendments,[27] the constitutional privilege against self-incrimination,[28] or the law of evidence[29] be invoked as ground for the objection. The instant case and *McNabb* v. *United States*, No. 25, this Term, present an appropriate occasion for examining the proper application of the familiar test. Neither case presents an instance of the mental and physical torture present in the recent cases dealing with extra-judicial confessions. But both involve statements made after questioning and therefore, although some circumstances are unusual, both touch upon the lawfulness of the Government's constant and deliberate practice of relying upon such statements in the discovery and prosecution of crime.

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[26] The expressions "voluntary" and "coerced" have been criticized on the ground that a confession is always the result of a choice and therefore voluntary. And it is true that in one sense an ignorant negro makes a choice when he confesses in response to the threats of his captors in order to escape mob violence. 3 Wigmore, *Evidence* (2d ed., 1923) § 824. We believe that custom and history have fixed the usage and that the familiar term supplies a meaningful principle when it is understood and applied in the light of its policies and traditions.

[27] *Chambers* v. *Florida*, 309 U. S. 227; *Lisenba* v. *California*, 314 U. S. 219.

[28] *Bram* v. *United States*, 168 U. S. 532, 542–543.

[29] *Hopt* v. *Utah*, 110 U. S. 574; *Sparf and Hansen* v. *United States*, 156 U. S. 51; *Wilson* v. *United States*, 162 U. S. 613; *Wan* v. *United States*, 266 U. S. 1.

As we view these cases, therefore, they involve a branch of the law that requires sensitivity and delicacy, touching as it does at once upon fundamental concepts of justice and upon the broad problems of law enforcement in the interests of protecting the public against crime. In these circumstances, we think it appropriate to examine in some detail the relevant criteria and the underlying rationale in this field in order that we may assist this Court in delineating the general rules to be applied to these cases.

In Point I, A, of this brief, therefore, we shall discuss the meaning of the rule that a confession is to be admitted or excluded accordingly as it is "voluntary" or "coerced." We shall show that the generalization is but a guide to the *ad hoc* decision of each case, a guide which indicates with all the accuracy that is desirable, first, whether the confession is so unworthy of credence as to be excluded in the interests of truth, and second, whether the law enforcement officers have disregarded individual liberties to an extent requiring suppression of any confession made to them.

In Point I, B, we shall show that it is both necessary and desirable for the trial court to be given wide discretion in applying the test of voluntariness. Each case presents a question of fact and of degree which can be most wisely and efficiently judged by the court in which the trial took place, subject, of course, to reversal when its con-

clusion is unreasonable in the light of the evidence.

In Point I, C, we shall show by an analysis of the facts that the six confessions involved in this case were "voluntary" within the rule as we understand it. In our brief in the *McNabb* case we shall discuss, without repeating the general analysis, whether in that case the admissions made by the petitioners there meet the test.

A. A CONFESSION IS ADMISSIBLE IN EVIDENCE IF THE WILL OF THE DEFENDANT WAS NOT SUBJUGATED TO THE DESIRE OF THE LAW-ENFORCEMENT OFFICERS, THAT HE SHOULD MAKE A CONFESSION

The rule which admits "voluntary" confessions and excludes those which are "coerced" is a rule of evidence. In part, it is a common law rule designed to limit the evidence considered to such statements as have testimonial worth. In part it expresses a policy of securing individual liberties by refusing to admit at the trial evidence obtained in disregard of such liberties. We believe, therefore, that the true meaning of "voluntariness" is best understood by examining it from these two points of view.

1. The primary purpose of the rules of criminal evidence is to admit evidence having a sufficient tendency to prove the truth of the charge to warrant its consideration by the jury, and to exclude evidence that is too unreliable. The guarantees of testimonial worthiness normally required are an oath and cross-examination, or a reliable substitute. Any test of the admissibility

of an extra-judicial confession must conform to the general purpose. It must exclude any confession lacking a substitute for oath and cross-examination and, except as some overriding consideration impels a contrary result, it should admit all confessions which have a guarantee of their testimonial worth. Cf. *Lisenba* v. *California*, 314 U. S. 219, 236; 2 Wigmore, *Evidence* (2d ed., 1923), §§ 823, 824.

The only available guarantee of the truth of an extrajudicial confession, apart from internal indicia of truth and corroboration by facts subsequently discovered,[29] is the self-interest felt by nearly all men in maintaining their innocence of crime. Experience teaches that men believe that their self-interest lies in freedom from punishment and disgrace, and do not *spontaneously* accuse themselves falsely;[30] in such a case, the self-interest of the accused in telling the truth, if he is innocent, is a guarantee of the testimonial worth of any confession that he makes. On the other hand, civilized peoples agree that torture renders a confession wholly unreliable because the accused is likely to believe that his self-interest lies in risking future scorn and punishment in order to end his present pain; a confession made

[29] The effect of such verification is discussed *infra*, p. 36, n. 38.

[30] The courts insure against the risk of convicting an innocent man who is abnormal in this respect by the rule requiring evidence corroborating the confession. See *Warszower* v. *United States*, 312 U. S. 342, 347.

during torture is not worthy of consideration. Between these two extremes, the question whether the confession has testimonial worth turns on whether the apparent interest of the accused in making a false confession was sufficient, even when balanced against his interest in maintaining his innocence, to create "a fair risk" or "reasonable probability" that the confession was false, thus rendering it improper for the jury's consideration.[31]

The traditional requirement of voluntariness seems to us to follow this analysis even though different words are used. Instead of speaking in terms of self-interest, the traditional requirement takes the identical premise, but expresses it by saying that an innocent man free to form his own judgment is so desirous of preserving his liberty and reputation that he will not make a false confession voluntarily no matter what the case against him. In this view, there is an excessive danger of falsity only if the confession was made under circumstances calculated to overcome the normal will of an innocent man, having the age, background, experience, and character of the defendant, not to accuse himself falsely.

If a promise held out by law enforcement officials[32] would overcome the normal resistance to

[31] Cf. *Lisenba* v. *California*, 314 U. S. 219, 236; 2 Wigmore, *op. cit.*, *supra*, § 824; American Law Institute, *Code of Evidence* (Proposed Final Draft) § 505.

[32] We shall assume throughout the case in speaking of promises, threats, and mistreatment that the actors are

making a false confession, then there is no guarantee of testimonial worth and the confession should be excluded. Similarly, if either actual mistreatment or threatened violence wears down that resistance, and fear of their repetition is stronger than the will to maintain innocence, then again, the guarantee of truthfulness is lacking. *Hopt* v. *Utah*, 110 U. S. 574, 585; 2 Wigmore, *op. cit. supra*, §§ 822–826; 2 Wharton, *Criminal Evidence* (11th ed., 1935), § 603.[33] The test of "voluntariness," we submit, is a shorthand expression of these criteria.[34]

"persons in authority" within the meaning of the decisions holding that misconduct by other persons will not vitiate a confession. See 2 Wigmore, *op. cit. supra*, §§ 827–830. We make the assumption because only law enforcement officials are involved in the *Anderson* and *McNabb* cases.

[33] In view of the number of state and lower federal court decisions on all phases of the admissibility of confessions, we shall make it our practice only to refer to secondary authorities, collecting and summarizing the cases, except in those instances in which we consider it persuasive on a critical point that the state decisions show a unanimous body of judicial opinion.

[34] A third form of expression is to say that a confession is inadmissible if induced by threats or promises, by fear or hope. Since there were neither threats nor promises in this case or in the *McNabb* case we need not consider whether this form of expression is undesirable because it suggests that any threat or any promise will render the confession inadmissible. See 2 Wigmore, *op. cit. supra*, § 825. In a case like the present, it is objectionable because it does not concentrate attention on the possibility that a false confession may be made by a defendant, not because he believes it to be in his self interest, but simply because fear or mental or physical debility have left him without the will power to repel an accusation of guilt. Cf. *Wan* v. *United States*, 266 U. S. 1.

Under this test, a confession to be voluntary need not be volunteered. Confessions made by an accused person in answer to questioning by the police may be voluntary. This corollary of the principle is critical in the present case for none of the petitioners, except possibly two,[35] volunteered his confession. Every accused person in custody, whether guilty or innocent, is under some compulsion to answer questions; he may feel that silence would be taken as a further indication of his guilt, and for that reason may attempt to explain away the case against him. Subsequently, the knowledge that his lies were ineffective and the normal human desire to unburden the conscience, or perhaps his estimate of the possibility of ingratiating himself with the prosecutor by telling the truth, may constrain him to confess if he is guilty. But there is nothing in a police examination calculated *per se* to overcome the normal will of an innocent man to maintain his innocence; there is no constraint to answer falsely. In view of that fact and of the uniformity in both federal and state decisions,[36] we

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[35] In the *Anderson* case, Felton Woodward confessed without having been questioned for several days immediately upon hearing Simonds state that he had made a confession. Hubbard also spontaneously confessed when he heard Simonds' story. See pp. 76–77, *infra*.

[36] 2 Wigmore, *op. cit. supra*, § 851; 2 Wharton, *op. cit. supra*, § 611. *Bram* v. *United States*, 168 U. S. 532, and the other decisions of this Court are discussed at length in connection with other policies requiring exclusion even of true confessions. See pp. 47–49, *infra*.

may take it as settled that confessions are not to be rejected for testimonial unworthiness merely because they are made reluctantly and in answer to questions from the police.

Likewise, the various unlawful acts sometimes committed by the police in tracking down criminals do not *per se* require a subsequent confession to be excluded for testimonial unworthiness. In the present case, for example, it is alleged (and in part denied) that the petitioners were arrested unlawfully, that one was kidnapped across a state line, that others were confined without a preliminary examination, and that several were denied counsel. These facts do not *per se* render the confessions too unreliable for use as evidence. An unlawful arrest, a lawless delay in arraignment, or the denial of counsel, will not inevitably cause an innocent man to accuse himself falsely. But such acts may well be part of the complex which breaks his will, and for that reason they are relevant. The ultimate question in dealing with the police examination and police misconduct, as with all other circumstances, is whether the only available guarantee of the truthfulness of a confession is lacking because the will of the accused not to confess falsely was overcome."

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[7] In determining the admissibility of a confession, one whose sole object is to admit evidence having testimonial worth will also take into account the extent to which the confession is corroborated. For example, Felton Woodward in his confession explained that he bought the dynamite under the name of "John M. Cash" at the Hercules Powder

It is important to observe that this test is partly subjective. A confession is voluntary only if *the defendant* made it voluntarily; therefore, in connection with the other circumstances, it is always necessary to take into account the defendant's age, sex, background, experience, and condition in life. Of course, the strength of the defendant's will not to accuse himself falsely cannot be measured precisely even with that information, but it is possible to formulate a workable idea of the strength of the normal man's will not to accuse himself falsely and to determine how far the defendant's will varies from normal as a result of peculiarities in his character. As we shall show below, this partly subjective character of the test is a strong reason for giving discretion in his ruling to the trial judge who alone can see the defendant and estimate his character.

2. Police practices in dealing with suspected criminals, and particularly in questioning them, sometimes outrun proper bounds in disregard of in-

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Company in Bessemer at a cost of between $20 and $25 (R. 510–512). Subsequently, the agents verified the fact (R. 819–820). Woodward could scarcely have known of this unless he spoke the truth in saying that he was "John M. Cash." Thus, the confession gains another indication of reliability and such indicia have been held to be of great importance in determining the question of admissibility. See 2 Wigmore, *op. cit. supra*, §§ 856–859. In the instant case, however, any circumstances requiring exclusion for unreliability would require exclusion regardless of the truth of the confessions (see pp. 48–49, *infra*), so that we need not consider this aspect of the doctrine.

dividual right, thus jeopardizing procedural and substantive liberties.[38] If all extra-judicial confessions were excluded from evidence, there would be less aggression against these liberties because the incentive would be largely removed.[39] On the other hand, it is essential that crime be detected and important that all data having testimonial worth be used to establish the guilt or innocence of the accused. Thus, there is a conflict between the demands of individual liberty and the public interest in efficient law enforcement. The test of voluntariness seems to us to resolve this conflict at the line marked by the Constitution. It should not, we submit, be modified by the courts to be more stringent.

a. The Constitution banishes all police practices resembling the tortures and tyrannies attributed to the Inquisition, the Star Chamber and the Court of High Commission.[40] The Fifth Amendment is based in part upon the twin convictions

[38] National Commission on Law Observance and Enforcement, *Report on Lawlessness in Law Enforcement* (Report 11, 1931) pp. 38–155; *Report of Committee on Lawless Enforcement of Law (Am. Bar Ass'n)*, 1 Am. M. of Police Science 573; Note, (1930) 43 Harv. L. Rev. 617; Booth, *Confessions, and Methods Employed Procuring Them* (1930), 4 So. Cal. L. Rev. 83.

[39] *Cf. Weeks* v. *United States*, 232 U. S. 383; *Nardone* v. *United States*, 302 U. S. 379; *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385; *Nardone* v. *United States*, 308 U. S. 338.

[40] For a history of such judicial methods and their causes, see Lowell, *The Judicial Use of Torture* (1897), 11 Harv. L. Rev. 220, 290.

that no man should be tortured whether he be guilty or innocent, and that under tyrannous procedures substantive liberties are insecure. Cf. *Chambers* v. *Florida*, 309 U. S. 227, 235–238. Lord Camden in 1762, in *Entick* v. *Carrington*, 19 Howell's State Trials 1029, stated the basic philosophy:

> It is very certain, that the law obligeth no man to accuse himself; because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust * * *. (P. 1073.)

In other words, as this Court has explained, the guarantees of the privilege against self-incrimination and of due process of law are limitations put upon the state in protection of the individual against invasions of "his indefeasible right" of personal security, personal liberty, and the privacies of life, where the right has not been forfeited by a conviction for crime. See *Boyd* v. *United States*, 116 U. S. 616, 630. But the constitutional prohibition is not laid upon only the most obnoxious practices. Even a restrained secret interrogation may gradually turn to mental or physical torture. Cf. *Brown* v. *Walker*, 161 U. S. 591, 596–597. Therefore, the accused is given the privilege, which he may choose to exercise or not as he pleases, to check the danger at the outset by refusing to answer any incriminating questions; if he refuses, the state must not use "physical or

moral compulsion to extort communications from him."[41]

The Constitution grants this privilege specifically by the provision in the Fifth Amendment that no man "shall be compelled in any criminal case to be a witness against himself,"[42] and it grants the privilege impliedly in the due process clause of the Fifth and Fourteenth Amendments. Both the privilege and this aspect of the due process clause stem from a single background and have an identical aim.[43] The purpose is to protect the liberties of the accused and not through a false sense of mercy, or of fairness in the sporting sense, to exclude damning evidence.[44]

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[41] *Holt* v. *United States*, 218 U. S. 245, 252–253.

[42] U. S. Const., Amend. V.

[43] Wigmore, *op. cit., supra*, § 2250; Pittman, *The Colonial and Constitutional History of the Privilege Against Self-Incrimination In America* (1935), 21 Va. L. Rev. 763; *Chambers* v. *Florida*, 309 U. S. 227, 235–238.

[44] Cf. 2 Wigmore, *op. cit. supra*, § 803. The astringent writing of Jeremy Bentham should be sufficient to explode the notion that a defendant's statements are to be excluded because it is unkind to convict a man upon his own admissions ("the old woman's reason"), or because to use them is so "unfair" in the sense of "unsporting" that society must be denied the use of the evidence in order to match the trial between it and the criminal more evenly ("the fox-hunter's reason"). VII Bentham's Works (Bowrings ed., 1843), p. 452. But cf. Note (1894) 8 Harv. L. Rev. 281.

There appears to be considerable difference of opinion as to whether the privilege against self-incrimination is violated by use of an involuntary extra-judicial confession. Professor Wigmore has argued that it is not, because the

The scope of the constitutional guarantee is shown both by the words of the constitutional guarantee and by the decisions of this Court. The privilege is not to be "compelled" to give evidence against oneself. And in the leading cases

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privilege is one to be free from testimonal compulsion; and this view has met with wide acceptance. See 2 Wigmore, *op. cit. supra*, § 823, 4 Wigmore, *op. cit. supra*, § 2252; Note (1940) 49 Yale L. J. 1059, 1063, n. 17, 1071, n. 70. But the decisions of this Court appear to adopt the opposing view. *Bram* v. *United States*, 168 U. S. 532; *Wan* v. *United States*, 266 U. S. 1, 5, n. 6. See also Chafee, *The Progress of the Law, 1919–1922—Evidence*, 35 Harv. L. Rev. 428, 439. Logically and practically there is no real difference between torture in the courtroom to compel a witness to testify and torture outside to obtain a confession to read at the trial. See *Brown* v. *Mississippi*, 297 U. S. 278, 285–286; *Lisenba* v. *California*, 314 U. S. 219, 237. The scope of the privilege is not to be limited by technical notions of the scope of a "criminal case" but "is as broad as the mischief against which it seeks to guard." See *Counselman* v. *Hitchcock*, 142 U. S. 547, 562. In any event, the federal government like the states may not deny due process of law and there is a denial of due process "when a coerced confession is used as a means of obtaining a verdict of guilt." *Lisenba* v. *California*, 314 U. S. 219, 236–237.

In addition to the purpose to exclude coerced confessions, whether true or false, the due process clause also guarantees defendants trials calculated to ascertain the truth. Thus, convictions after trials which are a sham on account of mob domination or fraud and subornation of perjury on the part of the state, are nullities because they deny the accused due process of law. *Moore* v. *Dempsey*, 261 U. S. 86; *Mooney* v. *Holohan*, 294 U. S. 103. It would seem that this reasoning might be applicable to overturn a conviction based upon an extorted confession. Cf. *Brown* v. *Mississippi*, 297 U. S. 278; see p. 32, *supra*. But to whatever extent it may be applicable, the appropriate criteria have been discussed in the preceding section.

setting aside convictions based upon confessions because due process was denied, the Court carefully pointed out that "the undisputed facts showed that compulsion was applied." *Chambers* v. *Florida*, 309 U. S. 227, 239; cf. *Brown* v. *Mississippi*, 297 U. S. 278. But there is no right not to be asked incriminating questions, and a voluntary confession is among the most effectual proofs. *Hopt* v. *Utah*, 110 U. S. 574, 585.

Coercion and compulsion exist in this sense when the accused is deprived "of his free choice to admit, to deny, or to refuse to answer," when his will is broken so that he will make whatever statement his inquisitors may desire. *Lisenba* v. *California*, 314 U. S. 219, 241; *Ward* v. *Texas*, No. 974, last term, decided June 1, 1942. This statement is to be read, we submit, to fulfill the aims which we described above. Examples applying it may be found in recent decisions of the Court. A confession obtained from a Chinese suffering physical pain, who was held *incommunicado* and questioned for seven days and all of one night, is obtained by compulsion. *Wan* v. *United States*, 266 U. S. 1. To question an ignorant negro for a week, culminating in an all-night session, after an unlawful arrest and in an atmosphere charged with indignation, arousing haunting fears of mob violence, and to use his confession to convict him, denies due process of law. *Chambers* v. *Florida*, 309 U. S. 227. See also *Brown* v. *Mississippi*, 297 U. S. 278; *Canty* v. *Alabama*, 309 U. S. 629; *White* v. *Texas*,

310 U. S. 530; *Lomax* v. *Texas*, 313 U. S. 544; *Vernon* v. *Alabama*, 313 U. S. 547; *Ward* v. *Texas*, No. 974, last Term, decided June 1, 1942. But although lawless and demanding severe censure, prolonged and severe questioning in which incriminating evidence is pressed upon the accused does not require exclusion of a confession, even though the accused had earlier been unlawfully detained, if the accused retained his free will and self-possession. *Lisenba* v. *California*, 314 U. S. 219.

Under this constitutional standard, obnoxious police practices are not *per se* cause for excluding a confession made after their occurrence. Lawlessness by the police is relevant to show whether the state subjected the accused to "physical or moral compulsion to extort communication from him," [45] but if his will was not impaired, the confession is admissible and the wrongs find other remedies. *Lisenba* v. *California, supra.*

Petitioners base much of their argument on a contrary view. They argue that "the illegal arrest and failure to arraign", as well as the absence of counsel at the interrogations, "were in themselves sufficient to warrant the exclusion of the confession" regardless of whether *in fact* those circumstances rendered the confessions involuntary (Br. 45). This view, petitioners assert, is supported by the concluding language of

[45] *Holt* v. *United States*, 218 U. S. 245, 252–253.

Ward v. *Texas*, No. 974, last term, decided June 1, 1942.[46]

We submit that petitioners' argument on this point is without merit. The cases cited by the Court, as well as the express language of the opinion, make it clear that in the *Ward* case the Court applied the very principles that we have discussed and concluded the undisputed facts there presented showed as a matter of ultimate fact "that petitioner was no longer able freely to admit or to deny or to refuse to answer, and that he was willing to make any statement that the officers wanted him to make" (pamph., p. 7). Again, that the Court did not intend to pronounce the rule which petitioners advocate, is plain from the very paragraph upon which they rely, for if mere "illegal detention" renders a confession *per se* involuntary, it would have been superflous for the Court to emphasize that the convictions which it had set aside were based upon confessions "extorted from ignorant

[46] The passage reads pamph. p. 7): "This Court has set aside convictions based upon confessions extorted from ignorant persons who have been subjected to persistent and protracted questioning, or who have been threatened with mob violence, or who have been unlawfully held incommunicado without advice of friends or counsel, or who have been taken at night to lonely and isolated places for questioning. Any one of these grounds would be sufficient cause for reversal. All of them are to be found in this case" [citing *Wan* v. *United States*, 266 U. S. 1, 14; *Brown* v. *Mississippi*, 297 U. S. 278; *Chambers* v. *Florida*, 309 U. S. 227, 241; *Canty* v. *Alabama*, 309 U. S. 629; *White* v. *Texas*, 310 U. S. 530; *Lomax* v. *Texas*, 313 U. S. 544; *Vernon* v. *Alabama*, 313 U. S. 547.]

persons." Furthermore, it can hardly be assumed that the Court in the *Ward* case overruled *sub silentio* both the well established rule that the question is whether upon all the facts the confession is voluntary and the recent decision in the *Lisenba* case.

It also follows from the nature of the constitutional restrictions that the Constitution does not forbid the Government to use a statement made by the accused in answer to questions by the police. The constitutional restrictions are designed to protect the individual against misconduct by the sovereign. The normal police examination is often successful in securing confessions from the guilty for two psychological reasons. The first is that many guilty men feel compelled to answer questions concerning their activities at the time of a crime for fear that silence will convince the police of their guilt. If this occurs, the second psychological reason may operate: if the accused realizes that his lying is unsuccessful in persuading the police of his innocence, he will tell the truth and confess voluntarily in order to relieve his mind. Proper police examination, therefore, consists, first, in hearing the details of the initial story and, later, in calling to the attention of the accused, if he is guilty, that it is useless to continue lying because his stories have been shown by investigation to be false or because he himself exposes their falsity by the inevitable inconsistency in the details of his state-

ment. That is essentially what occurred in the present case. Simonds volunteered a false statement on Thursday; he admitted that he was treated "nice enough" on that occasion. Friday and Saturday F. B. I. agents checked his story; he himself was not questioned except for two separate half-hour periods. On Sunday he was told that the investigation had proved his story false. Almost at once he confessed; and when they learned of Simonds' confession, Hubbard and Woodward made complete statements without being interrogated. See pp. 11–12, 16, 18, *supra*. There was simply a normal and sensible check by the police—who were scarcely bound to accept whatever version Simonds chose to tell—of Simonds' story. Once the falsity of the story was discovered by this entirely reasonable check, and the police knowledge of its falsity was disclosed to Simonds, the dam broke without more. In all of this there was nothing unlawful, nor any violation of constitutional right. An accused person feels compulsion to speak, at the outset, in the hope of establishing his innocence and, at the end, when that is gone, in the weight of his conscience, or in the hope of obtaining leniency. But in such a case the state cannot be said to have coerced the answers. The state has not invaded any right of personal security or privacy against the will of the accused, or exerted moral or physical compulsion to extort the communication. Such a confession, therefore, is admissible. See cases collected p. 48, *infra*.

Bram v. *United States*, 168 U. S. 532, should not be taken as contrary to our analysis. Although the opinion will support an argument that Bram's statement was held involuntary because he was questioned under such circumstances that he may have believed that silence would be taken by the detective as an admission of guilt, nevertheless, the decision does not go so far as to hold that a confession made in response to police questioning is *per se* involuntary. Mr. Justice White emphasized four other facts as essential to his conclusion: (1) Bram was alone in the room of the detective, (2) in a foreign land, (3) stripped of his clothing (this was emphasized in italics in the statement of facts)[17] and (4) under the complete authority and control of the detective (p. 563). Moreover, the judgment of reversal was equally rested on the ground that Bram was offered an "inducement" to confess by the statement, "If you had an accomplice you should say so, and not have the blame of this horrible crime on your own shoulders" (p. 564).

Any contrary interpretation of the *Bram* case would place it out of harmony with the other decisions of this Court. As we have pointed out, any accused person interrogated by the police is under some pressure to speak, and no confession made in answer to questioning by the police is "voluntary" in the sense that it is volunteered. Before

[17] It has been suggested that the stripping carried a silent threat that Bram was to be whipped.

the *Bram* case it was well settled that the courts would admit confessions made in answer to police questioning by a prisoner under arrest unless the confessions were otherwise shown to be the result of inducements or coercion. *Hopt* v. *Utah*, 110 U. S. 574, 584; *Sparf and Hansen* v. *United States*, 156 U. S. 51, 55; *Pierce* v. *United States*, 160 U. S. 355, 357; *Wilson* v. *United States*, 162 U. S. 613, 623. After the *Bram* case, Mr. Justice Brandeis said for the Court in *Wan* v. *United States*, 266 U. S. 1, 14:

> A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them.

And the Court expressed the same conclusion in other cases. *Hardy* v. *United States*, 186 U. S. 224, 229; *Powers* v. *United States*, 223 U. S. 303, 314; *Bilokumsky* v. *Tod*, 263 U. S. 149, 157; *cf. Lisenba* v. *California*, 314 U. S. 219, 239. We may accept it as an established principle, therefore, that a confession made in answer to interrogation by the police may be admitted in evidence without infringement of any constitutional right, provided that the accused is left free to end the examination into his guilt or innocence by a refusal to answer, and provided that his will is respected and not subjugated to the will of his accusers.

Comparison of the constitutional requirement with the criterion of testimonial worth shows that they are essentially the same both in abstract

statement and in practical application. Both are summarized in the words "voluntary" and "compulsion." And in practice, just as it is possible to estimate the strength of a man's will to refrain from accusing himself falsely, so is it possible to judge with sufficient accuracy whether the state, taking advantage of pain, fear, despair, or fatigue, overcame the will of the accused to end the questioning. In theory, it may be that a man is less ready to accuse himself falsely than he is to surrender his will to remain silent, but it is doubtful that so fine a line can be drawn in practice. The two aims, to admit true confessions and to abolish abuses, are overlapping; the ultimate test in each case is whether the confession is what the accused was willing to say or what the accusers wished him to tell them.

b. The Constitution, however, does not necessarily mark the full extent to which the Court may go in excluding evidence in order to improve police efficiency and to protect the individual by discouraging improper police practices. In the exercise of its power to formulate rules of criminal evidence for the federal courts,[48] the Court is free, within the limits of the judicial function, to formulate stricter standards of admissibility than are required to exclude testimonially worthless confessions and to enforce constitutional provisions. Thus, the Court might hold inadmissible a confes-

[48] *Funk* v. *United States*, 290 U. S. 371, 382.

sion made during the subsistence of any unlawful police practice regardless of whether the confession was voluntary. Or the Court might even exclude every confession made in the course of an examination by the police, thus in effect admitting confessions as evidence only upon proof that they were spontaneous or volunteered. But, we submit, to adopt either rule, or any other rule going beyond the requirements of reliability and the constitutional guarantees, would be contrary to the great weight of judicial opinion and, more important, in principle ~~otherwise.~~ unwise.

Unlawful arrests, delays in arraignment, and similar practices are interferences with individual liberty requiring censure and punishment. But it would seem too clear for argument that the courts should not be required to exclude a confession in *every* case in which it follows upon an unlawful act of the police. Where the unlawful act rests upon a technicality, it would have a destructive effect upon police and public morale to exclude damning evidence and allow the resulting acquittals merely because there was a violation of rules. Likewise, the trial of a criminal cause should not be interrupted and the continuity of the evidence before the jury destroyed by collateral inquiries every time it is suggested that there may have been unlawful conduct by the police in securing evidence. Even where the unlawfulness is a substantial violation of private rights (falling short of a violation of the Constitution), the exclusion of

confessions having high probative value, and the resulting acquittal of criminals is too high a price to pay in addition to other available sanctions to secure law observance by the police. Hitherto only constitutional rights have been thought to rank high enough to warrant such security. *Cf. Adams* v. *New York*, 192 U. S. 585; *Hester* v. *United States*, 265 U. S. 57; *Olmstead* v. *United States*, 277 U. S. 438; *Goldman* v. *United States*, 316 U. S. 129. We submit that the same rule should be applied to confessions and that illegality should be cause for exclusion of a confession only when it has been obtained in violation of the Constitution. The state courts with substantial uniformity have admitted in evidence extrajudicial confessions made voluntarily after such improper conduct as unlawful searches,[49] unlawful arrests,[50] delays in the preliminary examination,[51] or the exclusion of friends and counsel,[52] although they have recognized of course

[49] *Milbourn* v. *State*, 212 Ind. 161; *Quan* v. *State*, 185 Miss. 513.

[50] *Ivey* v. *State*, 4 Ga. App. 828, 831; *State* v. *Westcott*, 130 Iowa 1, 6; *State* v. *Raftery*, 252 Mo. 72; *People* v. *Trybus*, 219 N. Y. 18.

[51] *People* v. *Devine*, 46 Cal. 45; *People* v. *Vinci*, 295 Ill. 419; *Hicks* v. *State*, 213 Ind. 277, 291, certiorari denied, 304 U. S. 564; *Commonwealth* v. *Di Stasio*, 294 Mass. 273; *Commonwealth* v. *Mabey*, 299 Mass. 96; *State* v. *Wickman*, 39 N. M. 198; *People* v. *Doran*, 246 N. Y. 409; *People* v. *Alex*, 265 N. Y. 192.

[52] *Dewein* v. *State*, 114 Ark. 472; *State* v. *Cross*, 72 Conn. 722, 728; *State* v. *Van Vlack*, 57 Idaho 316, 343; *People* v. *Nelson*, 320 Ill. 273, 280; *State* v. *Neubauer*, 145 Iowa 337, 339–340; *State* v. *Heinz*, 223 Iowa 1241, 1253; *State* v. *Hale*,

that such circumstances are highly relevant in determining whether *in fact* the confession is voluntary. Such restraint leaves the way open for Congress to apply a sanction whenever it thinks wise and subject to any limitations it deems desirable.[53]

We submit also that the Court should not adopt an even more extreme rule requiring the exclusion of confessions obtained during cross-examination of persons in the custody of the police. The shocking conditions revealed by appellate court decisions and by the researches of investigators[54] naturally give rise to the suggestion that the evils must be ended by abolishing the system of police examination which lies at the root of the evils. The ability to use as evidence confessions obtained by cross-examination is said to lead a lax police force to rely upon confessions and not upon sound investigatory techniques in tracing clues and uncovering evidence.[55] Similarly it is suggested

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ton, 131 Kan. 138, 139; *McCleary* v. *State*, 122 Md. 394, 400-404; *Wright* v. *State*, 177 Md. 230, 235; *People* v. *La Panse*, 255 Mich. 38, 42; *State* v. *McGuire*, 327 Mo. 1176; *State* v. *Evans*, 345 Mo. 398, 406; *State* v. *Richardson*, 340 Mo. 680, 686; *State* v. *Murphy*, 87 N. J. L. 515; *State* v. *Vaisa*, 28 N. M. 414, 417; *State* v. *Gorham*, 67 Vt. 365.

[53] Compare *Olmstead* v. *United States*, 277 U. S. 438, and *Nardone* v. *United States*, 302 U. S. 379.

[54] See authorities cited p. 38, n. 39, *supra*.

[55] 4 Wigmore, *op. cit. supra*, § 2251. Stephen, 1 *Hist. Cr. L.* (1883) p. 442 note: "There is a great deal of laziness in it. It is far pleasanter to sit in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence."

that proper interrogation too easily becomes bullying and bullying becomes brutality.[56] The evil effects of the resulting "third degree" upon the whole system of law observance and law enforcement can scarcely be exaggerated.[57] Finally, proponents of this view point to the low rate of crime and high rate of crime detection in Great Britain where, apparently, the police are not permitted to interrogate a prisoner except to clarify a volunteered statement.[58]

But there are important considerations on the other side. The parallel with Great Britain is questionable because of difference in geographical conditions, mobility, homogeneity, and psychology towards the police.[59] Further, it has been suggested that in many localities better administration and

[56] *Cf. Brown* v. *Walker*, 161 U. S. 591, 596–597; Wigmore, *loc. cit. supra*, n. 54.

[57] Report of National Commission on Law Observance and Enforcement, *Report on Lawlessness in Law Enforcement* (Report 11), pp. 180–192. On the value of the "third degree" in its various forms, see Beyle and Parratt, *Approval and Disapproval of Specific Third Degree Practices* (1938), 28 J. Crim. Law and Criminology 526.

[58] Home Office Memorandum, reprinted 7 Can. Bar. Rev. 176, 177–178. But see 167 Law Times 257, 343; 73 Sol. J. 199, 246. It is said to be doubtful whether any statements made to the police after arrest are admissible in the English courts. See Report of National Commission of Law Observance and Enforcement, *Report on Lawlessness in Law Enforcement* (Report 11), p. 53. See also the summary of the *Savidge* case, *id.* p. 259.

[59] Warner, *How can the Third Degree be Eliminated* (1940), 1 Bill of Rights Rev. 24, 28–30.

the divorcement of law enforcement from political corruption would often improve morale and make it possible to restrain police questioning within proper limits."[90] So limited, the police examination serves a useful and legitimate function. In acquiring "leads," uncovering alibis and gaining information, the police must examine persons connected with the crime and none is likely to be a more fruitful source of information than a person suspected of engaging in it. Sound investigation requires a combination of examination and outside research, each of which would be less effective without the other.[91] The detection and conviction of criminals is not a game in which the weapons of the police must, to even the strength of the contending sides, be limited, nor is a trial on the issue of guilt or innocence an occasion for excluding evidence out of mercy.[92] "Fundamental unfairness" in this connection means a fundamental respect for the right of a guilty man to be free from abuse, and not a fair chance to escape punishment. It may be

[90] Booth, *loc. cit. supra*, n. 38; cf. Warner, *op. cit. supra*, n. 38, at p. 31.

[91] Report of National Commission on Law Observance and Enforcement, *Report on Lawlessness in Law Enforcement* (Report 11), p. 174: "In spite of this danger of abuse of ordinary police questioning, most observers in this country seem in agreement that the risk must be run because of the utility of the practice when kept within lawful limits."

[92] Bentham, *loc. cit. supra*, n. 45.

wise, therefore, to permit and perfect techniques for rational police examination, subject to proper control, rather than to suppress the practice.

But this is not the forum in which to choose between the alternatives. At the present time the law is well settled that confessions made in the course of a police examination after sharp questioning are admissible in evidence. See pp. 35–36, 47–48, *supra*. If a remedy is needed in addition to existing sanctions, the remedy should be administrative or legislative but not judicial. Two reasons support this conclusion. First, the courts are ill equipped to make the investigation necessary before the settled principles may be overturned. Second, the courts have no discretion in the choice of a remedy. The administrative officials may prescribe and enforce regulations designed to protect prisoners against the "third degree." If the legislative branch determined to forbid interrogation by the police and to exclude extrajudicial confessions thus obtained from evidence, it might meet the demands of law enforcement by providing a substitute such as an immediate examination by the prosecuting attorney in the presence of the counsel for the accused, or perhaps some system of quasi-judicial examination accompanied by a limitation, by constitutional amendment where necessary, of the privilege against self-incrimina-

tion.[63] But the courts can supply a remedy only at the expense of hindering proof at the trial and hampering enforcement of the criminal law; for the only remedy which they could prescribe would be to exclude confessions regardless of their probative value even though no constitutional rights of the accused had been violated.

Although *Bram* v. *United States*, 168 U. S. 532, taken alone might seem to support a contrary conclusion, it is clear that this Court has continuously held to be admissible confessions made during police examination. See pp. 47–48, *supra*. The state courts have held so unanimously.[64] We submit that this Court should adhere to that rule and exclude confessions obtained by questioning only when the duration and manner of questioning or other misconduct has broken the will of the defendant or subjugated it to the will of his interrogators in denial of his constitutional rights or in such a way that his confession is likely to be false.

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[63] Pound, *Legal Interrogation of Persons Accused or Suspected of Crime* (1934), 24 J. Crim. Law and Criminology 1014; Kauper, *Judicial Examination of the Accused—A Remedy for the Third Degree* (1932), 30 Mich. L. Rev. 1224; Hartshorne, *The Elimination of the Third Degree*, New Jersey L. J., April 9, 1942, p. 1; *Report of Committee on Lawless Enforcement of Law*, 1 Am. M. of Police Science 573, 593. But see Gardner, *Criminal Procedure in France* (1916), 25 Yale L. J. 225.

[64] 2 Wharton, *op. cit. supra*, § 611.

B. THE DECISION OF A TRIAL COURT THAT A CONFESSION IS "VOLUNTARY" SHOULD NOT BE REVERSED UNLESS IT WAS UNREASONABLE AND CONSTITUTED AN ABUSE OF DISCRETION

The aims and content of the rule which admits voluntary confessions and excludes those which were coerced, makes it apparent that in every case the trial court is called to rule upon an issue which is essentially a question of fact. *Wan* v. *United States*, 266 U. S. 1. The trial court's conclusion must depend upon the surrounding circumstances, upon the conduct of the police, upon the age, sex, experience, background and personality of the defendant and finally upon the impact of the one upon the other. The necessity of resolving conflicts in the testimony, of drawing inferences, of reliving past events in others' lives, and of forming a delicate judgment thereon, makes the issue of voluntariness, like such issues as due care and reasonableness, the kind customarily left by appellate courts to the court of first instance. The courts have often recognized this, pointing out the generality of the exclusionary rule and the importance of every circumstance. See, *e. g.*, *Hopt* v. *Utah*, 110 U. S. 574, 583.

One settled consequence of this characteristic of the inquiry is that an appellate court ordinarily will not upset the decision of the trial judge upon the credibility of the witnesses. Cf. *Lisenba* v. *California*, 314 U. S. 219; *Ward* v. *Texas*, No. 974, last Term, decided June 1, 1942. This consequence is important in both the instant case and the

McNabb case, for in both the petitioners' claims are based very largely upon testimony given by them but deliberately denied by witnesses for the Government whom the trial judge believed to be truthful.

A second consequence of the character of the inquiry is the need for giving the trial court scope for the exercise of discretion in addition to its powers to resolve direct conflicts in the evidence. The need exists chiefly because the trial court has a far better opportunity than the appellate tribunal to form the final factual judgment. The inferences to be drawn or rejected depend upon more intangible impressions than the bald conclusion that A told the truth as to a fact about which B lied; perhaps C, an overeager witness, exaggerated or D was plainly a dull and unobservant fellow. Likewise, a judge who has sat through the trial can recapture the atmosphere and the nuances of the events involved far more accurately than an appellate bench one or two steps further removed from them. This difference in opportunity is never greater than in determining whether a confession is voluntary. For example, the ruling must depend to a large and often decisive extent upon the personalities of the police officers and the defendant and upon their effect on one another. This was clearly pointed out in *State* v. *Squires,* 48 N. H. 364, 368:

> It is obvious also that what might affect one person greatly, might have no effect

> whatever upon another. So in weighing the evidence on this point much may depend upon the appearance of the witness who is to testify to the confessions, and his manner of stating what inducements were held out, if any; and from the nature of the case the decision of the court may in many cases be greatly and properly influenced by circumstances in the appearance of the witness or the respondent that could not be reported for the consideration of the whole court.

Because a trial court has a better opportunity to find the ultimate fact of whether a confession was voluntary, the appellate courts should exercise a wise restraint and leave the trial courts wide discretion.

An additional reason for leaving latitude to the trial court in this field is that the court in turn usually permits the jury to review its judgment as to whether the confession was voluntary.[55] In the instant case the court charged the jury (R. 831)—

> * * * I instruct you that before you can consider the confessions of the defendants, or any of them, you must first find that they were freely and voluntarily made, without fear or compulsion, or hope of reward. In determining this matter you will take into consideration all the facts and circumstances in evidence before you bearing on this subject; that is the way

[55] *Wilson* v. *United States*, 162 U. S. 613, 624.

> and manner in which confession or admission was obtained. * * * In passing on this question you will consider the age, experience, education, station in life and physical condition of the defendants; whether they have friends, relatives or counsel present; whether the questioning was carried on in an unreasonable manner and at unusual hours; whether or not they or any of them had been given drugs; whether they had sleep or food, whether or not they were kept in a private building or abused or cursed and forced to do other acts against their will.

Under such a charge the jury's verdict is likely to be based upon a sound judgment as to whether the police have trampled upon individual liberty; experienced observers have commented upon the large numbers of acquittals of apparently guilty men occurring when the jury sensed that the police had done the prisoner injustice by extorting a confession.[28] Moreover, after seeing and hearing the witnesses, a jury has an ability to pass judgment upon a situation that developed in its local community which cannot be approximated by an appellate court reading a cold record. Certainly, then, the judgment of both a trial judge and a jury should not be lightly overturned, even though on the bare undisputed facts which the record shows the appellate court might reach a contrary conclusion. Their conclusion should be

[28] Glueck, *Crime and Justice* (1936), 76-77.

reversed only when the record shows that it was unreasonable.

The state courts have uniformly held that in admitting or excluding evidence of an extrajudicial confession, much latitude must be left to the trial judge. In eighteen states there are no conclusive decisions. Of the remaining thirty, twenty give the trial judge "wide discretion," "discretion," or "considerable discretion" and eight others do not overturn his ruling unless "clearly against the evidence." Only two have expressed the view that once the conflicts in the evidence are resolved the question is one of law. (See Appendix, *infra*, pp. 94–98.) The lower federal courts have followed the weight of the state decisions,[87] and commentators approve the principle.[88] We submit that this Court should adopt the same guide.

The precedents in this Court do not stand in the way of dividing the functions of trial and appellate court in the manner which we advocate. In the recent decisions in cases coming from state courts, this Court has held that it was not foreclosed by the findings of two courts and a jury from examining the facts. *E. g. Chambers* v. *Florida*, 309 U. S. 227, 229, n. 4. But the decisions, as the line

[87] *Pearlman* v. *United States*, 10 F. (2d) 460 (C. C. A. 9); *Lewis* v. *United States*, 74 F. (2d) 173 (C. C. A. 9); *Hale* v. *United States*, 25 F. (2d) 430 (C. C. A. 8); *Mangum* v. *United States*, 289 Fed. 213.

[88] Greenleaf, *Evidence*, § 219; 2 Wigmore, *op. cit. supra*, § 861; 2 Wharton, *op. cit. supra*, § 597.

of authorities cited makes clear, go only to the point that examination of a federal question cannot be shut off by the state court's finding of fact. Similarly, we think that the Court's practice of accepting the undisputed facts and concluding from them whether or not there had been a denial of due process, cannot be taken as impliedly holding that the triers of fact have no discretion once the subsidiary facts are established.[69] Indeed, the opinion in *Lisenba* v. *California*, 314 U. S. 219, suggests that the Court has applied the test which we advocate; the Court said (pp. 238, 240):

> * * * In such a case, we accept the determination of the triers of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.
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> * * * Our duty, then, is to determine whether the evidence requires that we set aside the finding of two courts and a jury, and adjudge the admission of the confessions so fundamentally unfair, so contrary to the common concept of ordered liberty, as to amount to a taking of life without due process of law.
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> * * * But on the facts as we have endeavored fairly to set them forth, and in

[69] Compare the rule as to administrative agencies as shown by *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105; *Gray* v. *Powell*, 314 U. S. 402; *Wilmington Trust Co.* v. *Commissioner*, 316 U. S. 164.

> the light of the findings in the state courts, we cannot hold that the illegal conduct in which the law enforcement officers of California indulged, by the prolonged questioning of the prisoner before arraignment, and in the absence of counsel, or their questioning on May 2, coerced the confessions, the introduction of which is the infringement of due process of which the petitioner complains. * * *

And there can be no doubt that even if wide discretion was allowed to the triers of facts, reversal was required in the cases in which this Court has set aside convictions as based upon a coerced confession.

C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING THE CONFESSIONS IN EVIDENCE

The voluntary or involuntary character of the confessions made by petitioners Simonds, Hubbard, Woodward, Rhodes, Queen, and Ballew must be judged by the complex of circumstances under which each was made. Nevertheless, it is appropriate to analyze the diverse elements affecting each at the outset. Thereafter, we shall show that, viewing the circumstances as a whole, it becomes certain that the confessions were voluntary.

1. The confessions were made by the petitioners

Although each of the petitioners denied that he had told the F. B. I. agents any of the things in the confession signed by him (R. 654, 655, 668, 683, 694–695, 698, 736, 748), the agents testified that each con-

fession was made by the petitioner to whom it was attributed (R. 411–412, 444–445, 501, 517–518, 524, 526–527). The court resolved the issue of credibility against the petitioners and its decision is final. (See p. 57, *supra*.)

The finding that Ballew was not deceived into signing his confession is also final. Whitten and Lunsford, who took the confession, denied Ballew's claim[16] that the paper which he signed was concealed from him and represented to be a release (R. 803, 813). Each swore that Ballew read the confession and that it was read to him (R. 803, 812–813).

The fact that petitioners falsely denied making confessions does not bar them from contending that the confessions were obtained by compulsion and duress. *White* v. *Texas*, 310 U. S. 530. But the initial lie, and the inconsistency between the claim "I made no confession" and the claim "I confessed because I was coerced," would quite properly influence the trial court in deciding whether the claim of coercion was predicated upon false and exaggerated testimony.

2. *The confessions were not induced by promises of reward*

Petitioners also contend that their confessions were obtained by promise of parole and "of favorable treatment in the form of low bail

[16] R. 756.

bonds" (Br. 30–33, 41, 46). It is to be noted however, that neither Queen nor Rhodes nor Ballew made any such claim at the trial, and that the testimony of Simonds, Hubbard, and Woodward was specifically and categorically denied by witnesses for the Government (see pp. 12–13, 16, 19–20, *supra*). This conflict has been "conclusively resolved" by the triers of fact, and, therefore, petitioner's testimony furnishes no basis for their contention in this Court. (See p. 57, *supra*.)[11]

Petitioners, however, bottom their charge of inducement upon the testimony of Campbell, a deputy sheriff, who said that he had told "four or five of the men in custody that Agent Plaxico had said he would recommend a parole for those boys that come clean" (R. 273). Plaxico denied that he had made such a statement to Campbell but testified that Campbell had asked him to recommend leniency and that he had replied that all he could do would be to tell the facts. (R. 318, 493). This talk between Plaxico and Campbell, however, took place *after* the confessions had been signed (R. 318, 493), so that it is likely that Campbell's

[11] Petitioners also refer (Br. 46) to the testimony of the United States Commissioner that Agent Mann had requested lower bail bonds for the defendants who pleaded guilty and that Woodward's bond be reduced, as corroborating their claim of inducement. But the trial court was not required to believe his testimony, for the agents contradicted it. (See p. 19, *supra*.)

conversation with the men in custody occurred even later. Campbell could not remember the date (R. 272), and petitioner's argument (Br. 32–33) that Campbell would use the expression "come clean" only in the future tense is scarcely persuasive in the face of Plaxico's sworn statement that he talked with Campbell after the confessions had been made. Moreover, there was no evidence that Campbell talked about parole to any of the petitioners—others were in custody—or that any of the petitioners were told what he said. Not one of the petitioners claimed that Campbell offered any improper inducement to him.

It follows that the finding of the trial court that the confessions were not induced by promises of favor should be sustained.

3. The confessions were not induced by physical mistreatment or threats of violence

On this aspect of the case we may lay aside at once the confessions of Rhodes, Queen, and Ballew. Rhodes spent but one night in jail; he made no claim that he suffered or was threatened with physical mistreatment (see pp. 20–21, *supra*). Queen was in jail only 24 hours before he confessed and complained only that he had no supper the first night (R. 682–683). Ballew, who had been detained for only about 24 hours (R. 746, 756), himself admitted that during the questioning "nobody cussed me out

and I was not abused or threatened" (R. 758; cf. R. 747).

We may also quickly dispose of such claims of abuse by the federal agents as were made by Simonds, Hubbard, and Woodward. Simonds complained that he was cursed as a liar and that on one occasion Mann "slung" back his hand and showed a blackjack or gun (R. 231–232, 239–240; R. 658). But the agents contradicted him upon both points (R. 186, 276, 277, 289, 290, 372; R. 472, 787, 791, 820). Hubbard's testimony that he was deprived of his glasses (R. 204–205), "pushed up straight" in a straight-backed chair (R. 204–205; R. 667), and denied water and cigarettes (R. 207; R. 667, 668, 670) was disputed by the agents (glasses: R. 183, 299, 324, 346, 359, 368, 387; R. 435, 491, 497, 506, 789, 791; smoking: R. 299, 324, 325, 345–346, 359–360, 369, 385; R. 435, 497, 506, 788, 791, 808; cursing: R. 186, 281, 299, 324, 325, 346, 360, 372, 386; R. 492, 788–789, 800; pushing up in chair: R. 325, 346, 360, 369, 386; water: R. 325, 360, 368, 385). Woodward testified that Morgan forbade him to smoke (R. 257) and Morgan did not testify specifically upon the point. But Morgan talked to Woodward on but one occasion and then for only fifteen minutes so that Woodward's enforced abstinence is a triviality (R. 388–389).[72]

[72] Woodward testified that Morgan questioned him for a much longer period (R. 251, 252, 256) but on this point, as on other points on which the testimony conflicts, we accept the findings of the trial court.

There is no showing that Simonds, Hubbard, and Woodward suffered discomforts tending to impair their wills as a result of bad food and cramped sleeping quarters supplied by the sheriff. Simonds testified that from Wednesday noon through Friday breakfast he was given nothing but bologna sandwiches and coffee to eat, and that the coffee appeared to have been drugged (R. 225–228; R. 654, 678–679). He was not asked questions concerning his other meals. Neither did he say where he slept, except that Wednesday night he, Woodward "and maybe someone else" shared a seven by nine-foot cell in the city jail (R. 225; R. 652). Hubbard complained that he had no food on Saturday after making his breakfast on two bologna sandwiches and bad coffee (R. 206–207, 215; R. 667); he did not assert, however, that the food was bad on any other day. Hubbard also testified that on Thursday night he slept in a room with the deputy sheriffs (R. 202) and on Friday night was placed with three other men, including a drunk, in a small cell in the city jail (R. 203). He said nothing of where he slept on the other nights. Woodward's testimony was more extreme. He said that on Wednesday night he was given no supper (R. 247–248; R. 690); that on Thursday he had bologna for breakfast and lunch and no supper (R. 248–249; R. 690); on Friday morning he was served more bologna and bad coffee—as to lunch and supper, he did not say (R. 250–251; R.

691); Saturday was like Friday (R. 252); on Sunday he was given nothing to eat.

But the trial court was not obliged to believe this testimony; and it did not (R. 403). The court found that these witnesses had sworn falsely on other points (see pp. 63–65, *supra*); their claim, repeated here (Br. 37), that they lost as many as forty pounds in six days, could be received with skepticism, to say the least, even though it was not directly contradicted.

The petitioners' testimony was contradicted in substance. Agents Roche and Hevron testified that they had had reason to believe that the defendants were well treated, and that therefore they had not checked further into the matter (R. 174, 188–189, 355; R. 429–430, 433, 435–436, 440–441). There was also evidence that Simonds (R. 188–189, 196, 292), Hubbard (R. 188–189, 196, 300, 325, 369–370) and Woodward (R. 188–189, 196) had all complimented the agents on the manner in which they were treated, commenting particularly upon the food. As for the sleeping quarters, it will be observed that each of them specified only one night as the occasion of real crowding; and although the petitioners did not say it was Sunday, there was evidence that on Sunday night these three petitioners were put in a cell together at their own request, after making complete oral confessions (R. 188, 195, 326–327). The trial court was entitled to weigh this evidence against the testimony of the petitioners and to find, as

it did, that they "exaggerated considerably the treatment they received" (R. 403).

It seems proper to take into account at this stage of the case, moreover, the testimony given by Sheriff Biggs and two of his deputies before the jury that the men in custody ate the same food as the deputies and that the meals were carried to the jail whenever necessary (R. 554, 566–569, 670). The cook who prepared the meals testified (R. 570):

> The deputy sheriffs ate the same meals as The prisoners. They had the same thing as the guards ate. We would run a regular course of meals through the week and chicken on Sunday, roast beef, stew, steak and onions or something like that. We had coffee about 19 cents a pound, I made it in an urn and drank it myself and these men drank the same sort of coffee I did. I never put anything in the coffee. I have carried food down to the city jail from the Y. M. C. A. myself.

The Sheriff also testified that the petitioners were furnished beds at the Y. M. C. A. (R. 547, 548, 554) and his chief deputy said that no one spent more than two nights in jail (R. 568).

On the whole, it seems apparent that the petitioners were not so badly treated as to affect their decision as to whether to confess. They were more crowded on one or two nights than seems proper and perhaps they were justified in complaining that one or two meals were scant.

But surely the judge was not required to find more, and on the issue of voluntariness, this much does not loom large; it was insufficient to make them confess falsely and cannot have caused any such debility as would weaken their wills.

4. The confessions were not induced by oppressive questioning

Putting aside, therefore, the claims of fraud, threats, and proffered leniency, we come to the heart of the case: Whether the interrogation of the petitioners by the F. B. I. agents was carried on in such a way and under such circumstances as to render the confessions unreliable or to violate the petitioners' constitutional rights. We have pointed out earlier that a confession may be voluntary although made by a prisoner in custody during examination by the police. The issue depends upon whether the questioning was so oppressive as to wear down the will of the prisoner and subjugate his judgment. (See p. 45, *supra.*) In the instant case it is clear that the length of the periods of questioning, the hours at which the questioning was carried on, and the manner in which the questioning was conducted were entirely reasonable. And the sequence of events shows with convincing clarity that the petitioners, who were not hardened criminals, confessed not from fear, oppression, or weariness but because they sought to unburden their consciences, immediately upon learning that outside investigation had discredited their initial false statements.

Simonds was the first petitioner to confess (R. 291). He had been questioned on Thursday afternoon from 2 o'clock until 4, and again that evening from 7 o'clock until 9 (R. 172, 173–174, 175, 274, 283, 289, 309, 315, 326, 336; R. 490, 787). The agents identified themselves, explained that they were connected with the Government, told Simonds what had been done, and explained what they wished to question him about. He was told that he did not have to answer questions unless he agreed, but he insisted that he was innocent of the charge and was therefore anxious to discuss his movements during the critical period. (R. 193.) Simonds gave an alibi; for example, he covered one period by saying that he was at home in bed (R. 193). The agents accepted his narrative and went on with their investigation (R. 291). Simonds testified that the agents treated him nicely enough the first day (R. 233, 235).

When the agents left Simonds, they checked his story by independent investigation and found that it was false (R. 184, 193, 292, 320, 328). For example, Simonds' wife told them that he was not at home with her as he claimed to have been (R. 184). Apparently, it was in the course of this investigation that Simonds was questioned for one hour on Friday, and for two short periods on Saturday (R. 311–312, 315, 387). On Sunday the agents confronted Simonds with the results of their investigation, and pointed out the discrepancies between his story and the infor-

mation that they had gleaned in their investigation, such as the conflict between his statement and that of his wife (R. 184, 193, 291–292, 321). This took about an hour (R. 285). Hubbard was present at the time (R. 285). Simonds suddenly said, "boys, I am just going to tell you I am guilty." Then, in answer to a request that he tell the whole story, Simonds described, without being asked leading questions, the meetings that he had attended, the arrangements made to secure the dynamite, his part in the crime, and the complicity of the others. (R. 274–275.) That same afternoon Roche reduced the statement to writing and it was signed by Simonds (R. 168).

In all this, there was neither misconduct by the agents nor oppression of the accused. The interrogation occurred at reasonable hours; Simonds was not interviewed after 9 P. M. The periods of questioning were not long, two periods of two hours each on Thursday with a three hour interval, an hour Friday, two half-hour periods Saturday, and an hour on Sunday afternoon before he admitted his guilt. See pp. 11–12, *supra*. The questioning was not carried on in a bullying, oppressive manner; as we pointed out above, Simonds was neither abused physically nor threatened with violence. See p. 66, *supra*. Neither was he wheedled by inducements to confess. See p. 64, *supra*. The agents did not curse him but treated him courteously at all times (R. 186, 276, 289, 290; R. 472, 787, 791, 820). Doubtless their

manner was firm, perhaps severe, for they pointed out the logic of the physical facts and the failure of Simonds' explanations to stand up upon investigation. But now that the conflicts in the testimony have been resolved in favor of the Government, it is clear that Simonds confessed in the exercise of his own uninfluenced judgment because he realized that the agents knew the truth, and not because their questioning compelled him to confess.

Hubbard was the second to make a statement; he confessed immediately after Simonds under the following circumstances (R. 274–275):

> When we [Roche and Plaxico] walked in there Sunday afternoon Earl Hubbard and Edward Simonds were in this room and Earl was laying down and Ed was sitting on a chair and Plaxico and I started talking to him and talked to him about 45 minutes to an hour and didn't talk to Hubbard at all, he just sat there listening in and finally Ed says, "boys, I am just going to tell you I am guilty," so we said, "Ed, we want you to tell us just what happened, start over and give us the truth about the entire transaction." No leading questions were asked and he started from the beginning, the first meeting he attended, the arrangements made in reference to the dynamiting, his participation in it and the implication of the others and finally at the conclusion Earl Hubbard said, "Ed, since you have confessed, I will tell my part," and

we said, "O. K., what did you have to do with it," and Hubbard told his implication and the two talked back and forth and Simonds said Felton Woodward knows more about this thing than anybody.

Hubbard was questioned for two hours on Thursday afternoon and for two hours more that night but not after eleven o'clock (R. 181, 283, 296–297, 309, 322–323, 335, 345, 351; R. 434, 490, 500, 788). On Friday he was questioned twice, during the day—once for fifteen or twenty minutes (R. 384, 391) and once for about 45 minutes (R. 434) and again between 7:30 and 9:30 in the evening (R. 358–359, 362–363, 367, 375, 376; R. 503, 506–507). On Saturday, the day on which the doctor found that Hubbard had a cold, McCabe interrogated him for two hours, Morgan asked questions at intervals during the afternoon and Plaxico questioned Hubbard twice, each time for about half an hour (see pp. 11–12, *supra*). But in weighing the effect of Saturday's questioning, it must be remembered that there was no physical violence, nor any bullying, threats, curses, or wheedling promises (see pp. 64–67, *supra*) and that Hubbard was not disturbed at unreasonable hours. Had he confessed Saturday, the case would be closer, although we believe a judgment as to whether his will was coerced would necessarily depend upon

an estimate of his personality that only the trial court could make. But Hubbard did not confess Saturday and was not questioned on Sunday before he confessed. He admitted his guilt when Simonds had finished speaking, and without urging, which is convincing that he was left free to speak or remain silent and that he wished to speak.

Nor was Woodward's confession induced by oppressive questioning. Roche, Mann, and probably Hevron questioned him for two hours on Thursday. Friday and Saturday no questions were put to him except for two brief periods of fifteen minutes each. On Sunday he was not questioned until late in the afternoon after Simonds and Hubbard had confessed. (See pp. 17–18, *supra*.) They told the agents that Woodward knew more about the dynamiting than anybody else and suggested bringing him in (R. 194–275). That was done, and Simonds and Hubbard told Woodward what they had said. Woodward commented (R. 275):

> * * * well there isn't a Hell of a lot we can do about it, you have already told them and I might as well tell what I did * * *

Thereupon, he confessed. "It was not a matter of us getting a written statement or admission from Felton Woodward at all. It was Ed Simonds pointing out to him the things he had told him to do and the things he knew he was

involved in" (R. 293). The next day Woodward's confession was written out. It was detailed and took most of the day to put in writing but plainly the critical point was passed for he was merely repeating and adding minutiae to his oral confession (see p. 18, *supra*). As in the instances of Simonds and Hubbard, the agents denied Woodward's testimony of promises of reward, threats, and curses (see pp. 64–68, *supra*). We think that there can be no fair claim that Woodward was coerced by the time, extent, or manner of questioning.

Rhodes, Queen, and Ballew likewise were not subjected to oppressive questioning. Rhodes' confession, by his own account, was written out, signed, and witnessed within two hours after he was first questioned at 10 o'clock in the morning. At that time he must have known that Simonds, Hubbard, and Woodward had confessed, for he had spent the previous night in jail with them. (See pp. 20–21, *supra*.) Queen "thought he had been misled" by the other defendants and "was anxious to give a statement" (R. 523). Ballew was questioned for one hour (R. 537) on the afternoon of the 29th and made a statement the following morning immediately after a brief conversation with Simonds (R. 803, 812–813). Although Ballew testified that he was deceived as to what he was signing, Ballew admitted "nobody cussed me out and I was not abused or threatened" (see p. 21, *supra*).

5. The confessions were not induced by the unlawful detention of petitioners without the advice of counsel

If the present case had rested exclusively on the issue of whether the conduct of the F. B. I. agents was unlawful and oppressive so as to amount to compulsion or duress, we should for the foregoing reasons have felt no hesitation in strongly opposing the petition for a writ of certiorari. But the unlawful detention by State officials, the possibly hostile atmosphere of the company town, and the absence of consultation with counsel raise questions which we thought this Court might wish to consider, although they do not call for reversal of the decision. Compare *Lisenba* v. *California*, 314 U. S. 219, 240. Petitioners rely particularly on "illegal detention, without advice of friends or counsel" (Br. 44–45) as ground for reversal. This contention is predicated solely upon the assumption that *Ward* v. *Texas*, *supra*, decides that a confession is inadmissible whenever it appears that the accused was illegally arrested or was interrogated before he had been arraigned and given the assistance of counsel (Br. 45). We have shown that petitioners misread the *Ward* case (see pp. 43–45, *supra*). The critical inquiry in every case is whether such circumstances constitute coercion and compulsion. In the instant case, such abuses as did occur fall in the category to be punished by the state and remedied by private action rather than by reversal of the con-

victions. For these added circumstances were not such as to subjugate the petitioners' wills and render their confessions involuntary.

The arrests were made without a warrant and probably were unlawful.[73] The detention of Simonds, Hubbard and Woodward for almost six days without a preliminary examination (four of which were before they confessed) was a violation of a Tennessee statute providing that no person shall be committed to prison before examination before a magistrate. Michie's Tennessee Code of 1938, § 11515.[74] Such conduct has been severely condemned by this Court and inevitably casts doubt upon any confession made while it endures. But if we are right in our belief that an unlawful arrest or confinement does not without more require exclusion of a confession,[75] then the illegality here was not of a character to require that result. Nor was it rendered so by the fact that dur-

[73] In Tennessee an officer may arrest without warrant a person who he has reasonable grounds to believe committed a felony which in fact has been committed. Michie's Tennessee Code of 1938 § 11536. But although apparently the sheriff believed that he was arresting the men for committing a felony (R. 550), we are not clear that under local law any felony had been committed. Destruction of the power lines and the conspiracy apparently were only misdemeanors. *Id.*, §§ 10863, 13065.

[74] As to Rhodes, Queen and Ballew, the legality of their detention may be open to doubt, for the statute allows the Sheriff some leeway and they were held only for a comparatively short time before being arraigned before the United States Commissioner. *See State* v. *National Surety Co.*, 162 Tenn. 547 (1931).

[75] See pp. 36, 43–45, 50–52, *supra*.

ing their detention the petitioners saw neither counsel nor friends nor relatives who were not under arrest. When an ignorant man is seized unlawfully and held without arraignment and without seeing other persons, the power of his captors may appear to increase each hour that they hold him *incommunicado*—the more so if his friends are poor and helpless or if they do not know his whereabouts. The very hopelessness of his situation may fill him with terror and render his will pliant to the will of his inferrogators. But the petitioners' attempt to portray their situation in that light should not succeed. Copperhill is a small town of about 1,000 people. A number of men were in custody; they were taken back and forth between the jail and the Y. M. C. A.; the prisoners knew that the agents were questioning people and carrying on their investigation. It is not unreasonable to conclude that the petitioners must have realized that the town knew them to be in custody. And the record, we think, makes plain what certainly the trial judge and jury with their opportunities for observation were warranted in concluding—that petitioners were neither ignorant men nor easily frightened. Hence, it is very significant that none of the petitioners even suggested that he sought and was refused leave to communicate with his friends and family. And, although two, Simonds and Hubbard, testified that the agents refused them counsel, the agents specifically testified that no such request

was made (R. 175, 290–291, 327, 372; R. 346–347, 352, cf. R. 325, 359, 368, 372, 385). The suggestion that this case involves a denial of the right to the assistance of counsel is therefore unwarranted.

One other circumstance of the detention remains. Petitioners contend that the fact that they were questioned at "the Company-owned headquarters of the petitioners' most hated and feared enemies—Sheriff Biggs and his deputies", exerted an "enormous psychological pressure" upon them to confess which was equivalent to the threat of mob violence described in *Chambers* v. *Florida*, 309 U. S. 227 (Br. 43–44), and which was more likely to induce fear and break down resistance than "taking the prisoner 'to lonely and isolated places for questioning'" as was done in *Ward* v. *Texas*, No. 974, last Term, decided June 1, 1942. Admittedly, the crimes grew out of a labor dispute; there were 20 or 25 armed deputies about as the result of a strike, men who doubtless were paid by the company; at times the petitioners were held and questioned on company property. How far these intangibles affected petitioners is not clear, but manifestly the petitioners overstate their case. The deputies did not participate in the questioning. The agents repeatedly assured the petitioners that they had no interest in the strike (R. 295, 349, 389–390). It is true that Hubbard said that the deputies laughed at him when they passed the open door (R. 209); and Simonds testified that they had laughed but that

he had not known whether they were laughing at him or not (R. 230). But no petitioner even intimated that fear of the deputies played a part in his decision to confess, and surely this testimony of Hubbard and Simonds does not require the conclusion that fear of the deputies influenced their confessions. On the contrary, there was evidence, not contradicted by any petitioner, that at least some of the strikers "were friendly with the deputy sheriffs" (R. 308), and that even Hubbard "indicated the deputy sheriffs had been nice to him" (R. 369–370).[76]

We should ignore reality if we argued that strikers would not feel discouraged when arrested in a company mining town and held for a serious crime, without examination before a magistrate by a Sheriff whose deputies were acting for the company. Yet in weighing those facts their effects should not be exaggerated. Had the questioning been oppressive, there might be some doubt. But the questioning was above reproach, and the sequence of events is convincing that the petitioners confessed from a realization that the truth would out, and from a desire to unburden their

[76] There was also testimony that after he confessed, Simonds stated that the F. B. I. men were "the finest bunch of men that he had ever come in contact with, he would like to be a Special Agent himself," and "thought he would go ahead and study and try to be a Special Agent" (R. 292. See also R. 233–234). Similarly, Hubbard thanked the agents "with tears in his eyes" and said "he had never been treated nicer in his life" (R. 300, 325).

consciences. Moreover, the petitioners were not held alone. *They and their fellows were in custody together,* and this close and constant association was necessarily a source of mutual strength and support. Moreover, the fact that a labor dispute was in the background is not wholly one-sided, for petitioners were members of a strong national union which was in a position to aid them through local counsel already on retainer if the circumstances seemed to require it. (See p. 14, *supra.*) We submit, therefore, that there is no substantial probability that the wills of the petitioners were bent or subjugated to the will of the officers that they confess.

CONCLUSION AS TO CONFESSIONS

The trial court ruled correctly that the confessions of Rhodes, Ballew, and Queen were admissible in evidence against them. Laying to one side the disputed facts, the only circumstances which can be cited against admissibility are that they were in custody and confessed in answer to examination by law enforcement officers. A confession is not involuntary for those reasons alone. *Wan* v. *United States,* 266 U. S. 1, 14. It would make no difference if the detention was unlawful.

We submit, also, that examining the facts *de novo,* the confessions of Simonds, Hubbard, and Woodward are shown to be voluntary. We believe that no one can read the entire record without

reaching the firm conviction that petitioners' confessions were made voluntarily; that their claims of duress, coercion and intimidation are grossly exaggerated; and that the F. B. I. agents to whom the confessions were given were not guilty of any improper or oppressive conduct. And although the truth of a confession furnishes no ground for receiving it into evidence, the unusual nature of the admissions made in the confessions here involved, the detailed description of all of the meetings, preparations, and plans, of the manner in which the dynamite and other equipment was obtained, moved, and concealed, and of the technique used in blasting the poles and steel towers, are all utterly inconsistent with petitioners' claim that the agents fabricated the confessions.

But even assuming that upon a *de novo* examination of the facts there is room for doubt whether the confessions of Simonds, Hubbard and Woodward were voluntary, it is clear that there was no reversible error in admitting them. The elements tending to show coercion were intangibles at best, which would be evaluated only by those who had watched these three petitioners and the agents on the witness stand and could judge, in the light of local experience, the petitioners' reaction to the events. There is nothing in the record which requires the conclusion that any one of them in fact "was no longer able freely to admit or to deny or to refuse to answer." [77] The

[77] *Ward* v. *Texas*, No. 974, last Term, decided June 1, 1942.

trial court, and the jury under a careful charge, concluded that the confessions were voluntary. The finding of ultimate fact was not unreasonable and, therefore, their decision should be sustained.

II

NO PETITIONER WAS PREJUDICED BY THE READING INTO THE RECORD OF ANOTHER'S CONFESSION IMPLICATING HIM

Although the confessions were introduced with the names of the co-conspirators deleted, petitioners contend that, since the names were read into the record during cross-examination of those who confessed, "the erroneous admission of any one of the confessions constituted prejudicial error to all other petitioners implicated by such confession," because prejudicial inferences were thereby conveyed to the jury "which would not have been present otherwise" (Br. 49–51). This contention, we submit, is not persuasive. In his charge the judge made it clear that a confession was evidence against only the defendant who made it and any other defendant who was present and named in the confession but did not deny the accusation (R. 831–850). Since the confessions were thus properly limited in their effect as evidence (*Hagen* v. *United States*, 268 Fed. 344, 345–346 (C. C. A. 9), certiorari denied, 255 U. S. 569), it is clear that any error in admitting a confession would be grounds for reversal only of the con-

viction of the petitioner against whom it was admitted.

The argument to the contrary (Br. 49–51) is based upon the assumption that any involuntary confession permeated the whole case and was made the basis of all the convictions in spite of the charge. This argument could be equally well made regardless of whether the confessions were voluntary or involuntary, for in either event they could not be used as evidence against the other defendants. The argument might carry weight before trial on a motion that the defendants who did not confess should have separate trials. But the objection comes too late where no such motion was made and after the trial court has taken every step to protect their interests.

The evidence exclusive of the confessions, moreover, makes it clear that none of the petitioners was prejudiced by the use made of the others' confessions.

Anderson and Ellis, who did not confess, have abandoned (Br. 39) their attack upon the sufficiency of the evidence, and the proof of their guilt, apart from the confessions, is clear and convincing. Anderson was implicated by the confessions of Woodward (R. 706–707, 710, 713–719, 721, 730), Hubbard (R. 672, 674, 675) and Simonds (R. 664, 665); but his identity as the ringleader who wanted the towers and poles blown up, and at whose office the conspirators met to plan the dynamitings (R. 133–135), had already been established by the

testimony of Freed Long, who had been driven to the first meeting in Anderson's car (R. 132).

Ellis was mentioned in Woodward's statement (R. 710, 711, 713, 716). But abundant other evidence also pointed to his guilt. He drove Long in Anderson's car to the meeting of the conspirators on April 13th (R. 132, 137). He was very close to Anderson in union matters, for he worked around Anderson's office and ran errands for him (R. 587, 611); thus, he was a person likely to know of any plans to aid the strike by recourse to violence. And, what is most important, Anderson's car made suspicious movements on March 31st, the night of the first dynamiting, over unpaved side roads. Ellis was driving; with him were his wife and child, and there had been an unidentified passenger (R. 152, 153, 158). Aroused by it suspicious movements, sheriff's deputies stopped and searched the car; in it were a brace and two bits, the larger of which measured about an inch and a quarter in diameter (R. 153, 154, 156, 157, 159, 160). About fifteen minutes later the first explosion occurred (R. 157). The poles supporting the power line had been bored with a brace and bit to make holes for the dynamite. Ellis gave no satisfactory explanation for his movements, explaining that he was driving around "to relieve the baby's colic"; that while riding around they had left the paved road and had driven off on a side road because his wife "had never been out on that road"; and that the passenger was a stranger, a hitch-hiker

whom he had picked up on the road (R. 606, 607). The evidence referred to linked Anderson and Ellis so strongly to the conspiracy that the cumulative effect of the mentioning of their names in any of the confessions was of little consequence.

In the cases of the petitioners who confessed, each statement, when considered with the testimony of Freed Long and the other corroborating independent evidence of the conspiracy (see pp. 4–7, *supra*), overwhelmingly established the guilt of the one who made it, and none of these petitioners can reasonably be said to have been prejudiced even though another's confession implicating him might have been erroneously admitted.

III

THERE WAS SUFFICIENT EVIDENCE CORROBORATING THEIR CONFESSIONS TO SUPPORT THE CONVICTIONS OF RHODES, QUEEN, AND BALLEW

Petitioners Rhodes, Queen, and Ballew, whom we have shown to have no substantial basis for their claim that their confessions were involuntary, contend that "lack of corroboration of [their] confessions * * * rendered their conviction erroneous as a matter of law" (Br. 51–56). This contention, we submit, is wholly without merit.

It is well settled, as the court below pointed out (R. 876), that the conviction of an accused in a criminal case cannot be supported by an uncorroborated confession. See also, *Evans* v. *United States*,

122 F. (2d) 461, 465 (C. C. A. 10), certiorari denied, 314 U. S. 698, and authorities there cited. "The corroboration must touch the corpus delicti" (*Daeche* v. *United States*, 250 Fed. 566, 571 (C. C. A. 2)), which in a conspiracy, consists of "the unlawful combination, confederacy, and agreement between two or more persons." *Ryan* v. *United States*, 99 F. (2d) 864, 869–870 (C. C. A. 8), certiorari denied, 306 U. S. 635; *United States* v. *Manton*, 107 F. (2d) 834, 838 (C. C. A. 2), certiorari denied, 309 U. S. 664. It is not required, however, "that the independent evidence of *corpus delicti* shall be so full and complete as to establish unaided the commission of a crime. It is sufficient if the extrinsic circumstances, taken in connection with the defendant's admission, satisfy the jury of the defendant's guilt beyond a reasonable doubt." *Jordan* v. *United States*, 60 F. (2d) 4, 5 (C. C. A. 4), certiorari denied, 287 U. S. 633. See also, *Evans* v. *United States*, *supra*, at 465; *Ryan* v. *United States*, 99 F. (2d) 864, 870 (C. C. A. 8), certiorari denied, 306 U. S. 635; *Forte* v. *United States*, 94 F. (2d) 236, 240 (App. D. C.); *Wiggins* v. *United States*, 64 F. (2d) 950, 952 (C. C. A. 9), certiorari denied, 290 U. S. 657.

In the instant case it is clear that the confessions were adequately corroborated by independent evidence. Freed Long testified as to the existence of a conspiracy to blow up the power lines

leading into the Copper Basin. He described in detail the meetings of some of the conspirators and, in advance, told the Sheriff when the last explosion would take place. See pp. 4–6 *supra*. Moreover, even without his testimony, it would have been obvious that there had been a conspiracy. Service had to be interrupted on both lines to deprive the company of power (R. 129), and the two different lines which were miles apart and in hilly country (R. 128–131) were dynamited almost simultaneously. More than one man was necessary to carry the tools, fuse, and explosive, and planning was essential to assemble them.

These three petitioners make no claim that their convictions are not supported by the confessions and the corroborating evidence. Relying upon *Forte* v. *United States*, 94 F. (2d) 236 (App. D. C.), they argue that in a conspiracy, like any other offense requiring *scienter*, the identity of the criminal is an element of the *corpus delicti* "which must be proved by independent evidence" (Br. 54), and that since there is no evidence other than their confessions to connect them with the crime (R. 875), their convictions were erroneous. The decision in the *Forte* case, however, compels no such conclusion.[78] That case involved a prose-

[78] In *George* v. *United States*, 125 F. (2d) 559, 563 (App. D. C.), Associate Justice Stephens, who wrote the opinion in the *Forte* case, said: "We did not hold [in the *Forte* case] that the connection of the accused with the crime must be shown by evidence outside the confession."

cution for interstate transportation of a stolen car, knowing it to be stolen. The court held that guilty knowledge was an element of the *corpus delicti* as to which corroboration of the confession by independent evidence was required. And since the Government had expressly waived reliance upon the inference of guilty knowledge arising from possession of the stolen car, the court held there was insufficient corroboration to justify use of the confession. In the instant case, however, there was substantial evidence to support the inference that those who dynamited the lines must have known that what they did was part of a common design. "Proof of a conspiracy may be by circumstantial evidence, often times by overt acts alone" (*Marino* v. *United States,* 91 F. (2d) 691, 698 C. C. A. 9), certiorari denied *sub nom. Gullo* v. *United States,* 302 U. S. 764), and guilty knowledge may be inferred. *Id.,* at 699. We think it is clear, therefore, that petitioners were properly convicted."[19] If the *Forte* case stands for

[19] See also *Pinkussohn* v. *United States*, 88 F. (2d) 70 (C. C. A. 7), certiorari denied, 302 U. S. 702; *Vinkemulder* v. *United States*, 64 F. (2d) 535 (C. C. A. 5), certiorari denied, 290 U. S. 666; *Aplin* v. *United States*, 41 F. (2d) 495 (C. C. A. 9); *Rich* v. *United States*, 271 Fed. 566, 569 (C. C. A. 8); *United States* v. *Marcus*, 53 Fed. 784, 786 (C. C. S. D. N. Y.), error dismissed, *Marcus* v. *United States*, 159 U. S. 259. The rule in the state courts likewise permits conviction when the confession is the only evidence linking the crime to the defendant. *Vernon* v. *State*, 239 Ala. 593, 598–599, reversed on other grounds, 313 U. S. 547; *Williams* v. *State*, 8

a different rule, then, we submit, that case is contrary to the weight of authority represented by the decisions cited above [80] and to the rationale of the rule requiring corroboration which is merely to protect "the administration of the criminal law against errors in convictions *based upon untrue confessions alone.*" [Emphasis added.] *Warszower* v. *United States*, 312 U. S. 342, 347.[81]

Ala. App. 394; *Ivy* v. *State*, 109 Ark. 446; *Standridge* v. *State*, 169 Ark. 294; *People* v. *Tarbox*, 115 Cal. 57, 62; *People* v. *Stephens*, 30 Cal. App. (2d) 67; *Cochran* v. *State*, 113 Ga. 726, 736; *Messel* v. *State*, 176 Ind. 214; *State* v. *Cook*, 188 Iowa 655, 662; *Frierson* v. *Commonwealth*, 175 Ky. 684; *Weller* v. *State*, 150 Md. 278; *Commonwealth* v. *Morrissey*, 175 Mass. 264; *People* v. *Dowd*, 252 Mich. 404; *Roberts* v. *State*, 153 Miss. 622; *State* v. *Rickart*, 81 S. W. (2d) 309 (Mo.); *Chezem* v. *State*, 56 Neb. 496; *People* v. *Taleisnik*, 225 N. Y. 489, 494; *State* v. *Knapp*, 70 Ohio St. 380; *Edwards* v. *State*, 46 Okla. Crim. 77, *semble*; *Commonwealth* v. *Kauffman*, 94 Pa. Super. 419; *Burk* v. *State*, 50 Tex. Crim. 185; *Cleek* v. *Commonwealth*, 165 Va. 697. See also, Wharton, *Criminal Evidence* (10th ed.), §§ 633, 634. But cf. Underhill, *Criminal Evidence* (3d ed.), § 240.

[80] See also *Smith* v. *United States*, 9 F. (2d) 386, 387 (C. C. A. 9), certiorari denied *sub nom. Oreb* v. *United States*, 271 U. S. 674, where the court held that admissions made by three of five alleged conspirators were admissible against those who made them "in any event" even though "In the absence of a complete statement of the evidence previously received, [the court could not] say whether or not there was prima facie evidence of the conspiracy."

[81] As petitioners assert (Br. 55), the court in the *Forte* case (94 F. (2d) at 239) "stated that a real danger of [the use of] false confessions, coerced or psychopathic, is created by the evidence in the decisions of the Courts and the dependable reports of criminological investigations of lawlessness on the part of law enforcement officials." But it should be

CONCLUSION.

It is respectfully submitted for these reasons that each of the judgments of conviction below should be affirmed.

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OCTOBER 1942.

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noted that the court there also stated that "Happily * * * according to the Report of the National Commission referred to, there is little evidence of the use of third degree methods by Federal officials anywhere" (94 F. (2d) at 240). And we have fully shown, *supra*, that the confessions used herein were not obtained by third degree methods.

APPENDIX

Collected below are illustrative cases from each of the states showing the division of responsibility between trial and appellate courts in passing upon the admissibility of extra-judicial confessions.

Alabama: *Morton* v. *State,* 206 Ala. 300 (ruling of trial court will be affirmed except in cases of "manifest error".)

Arizona: *Kermeen* v. *State,* 17 Ariz. 263, 266 (ruling of trial court will be affirmed unless its "sound legal discretion * * * has clearly been abused"); *Indian Fred* v. *State,* 36 Ariz. 48, 58–59 (same).

Arkansas: *Runnels* v. *State,* 28 Ark. 121, 125 (the trial judge "admits or rejects them as appears right in his discretion, and his judgment is not a subject of reversal unless arbitrarily abused". See also *Williams* v. *State,* 63 Ark. 527, 530.

California: *People* v. *Castello,* 194 Cal. 595, 600 ("The trial court is clothed with considerable discretion"); *People* v. *Connelly,* 195 Cal. 584, 598 (no reversal unless trial court "abused its discretion"); *People* v. *Perry,* 195 Cal. 623, 636 (the trial court has "wide discretion").

Colorado: *Mitchell* v. *People,* 76 Colo. 346, 348 (no reversal unless there was a "clear abuse of discretion"); *Moya* v. *People,* 88 Colo. 139, 142 (no reversal unless there was a "clear abuse of discretion").

Connecticut: *State* v. *Cross,* 72 Conn. 722, 727 (no reversal unless "discretion was abused"); *State* v. *Di Battista,* 110 Conn. 549, 563 (no reversal unless

there was "an unreasonable exercise of the court's discretion").

Delaware: no cases.

Florida: *McCall* v. *State,* 120 Fla. 707, 718 (no reversal except "in case of abuse of his discretion").

Georgia: *Bryant* v. *State,* 191 Ga. 686, 711 (the trial court has "discretion").

Idaho: *State* v. *Dowell,* 47 Idaho, 457, 464 (the question of admissibility is addressed "primarily to the discretion of the trial court").

Illinois: *People* v. *Guido,* 321 Ill. 397, 411 (no reversal unless the trial court's ruling was an "abuse of discretion" and "manifestly against the weight of the evidence").

Indiana: *Tuppin* v. *State,* 206 Ind. 345, 350 (no reversal except in cases of "abuse of discretion"). Cf. *Hauk* v. *State,* 148 Ind. 238, 252–253 (the appellate court is "not authorized to weigh the evidence * * * or attempt to reconcile any conflict therein").

Iowa: *State* v. *Storms,* 113 Iowa, 385, 392 (the question is "peculiarly in the sound discretion of the trial judge" because "the trial court saw and heard the witnesses, and had better knowledge of the facts than we can possibly have").

Kansas: no cases.

Kentucky: *Howard* v. *Commonwealth,* 28 Ky. Law Rep. 737, 738 (the question is within the "sound discretion" of the trial court).

Louisiana: *State* v. *Bartley,* 34 La. Ann. 147, 150 ("the ruling of a Judge of the first instance on a question of this character should not be disturbed, unless clearly erroneous. The presence of the witnesses before him, their manner of testifying,

character, etc., offered an opportunity of reaching a correct conclusion in the point at issue, superior to any we possess").

Maine: *State* v. *Grover,* 96 Me. 363, 366 ("the question must be determined by the presiding justice as a question of fact. In 1 Greenl. Ev. 219, it is stated that the matter rests wholly in the discretion of the judge. Upon exceptions to his opinion on this question the law court should not reverse his decision merely because it would itself have come to a different conclusion, but only when the circumstances are such that it can say as matter of law, that the confession was not voluntary in the legal sense. It will regard the findings of the presiding justice upon this question of fact, as it does the findings of a jury upon questions of negligence, as entitled to stand unless the contrary inference is the only reasonable one").

Maryland: no cases.

Massachusetts: no cases.

Michigan: no cases.

Minnesota: *State* v. *Staley,* 14 Minn. 105, 112 (the question rests "to some extent in the discretion" of the trial court); *State* v. *Holden,* 42 Minn. 350, 353 (no reversal "unless * * * manifestly against the weight of the evidence); *State* v. *Nelson,* 199 Minn. 86, 89 (no reversal "unless manifestly contrary to the evidence").

Mississippi: no cases.

Missouri: *State* v. *Hopkirk,* 84 Mo. 278, 284 (no reversal except for "error manifest").

Montana: *State* v. *Berberick,* 38 Mont. 423, 442 (no reversal unless "clearly in conflict with the weight of the evidence"); *State* v. *Ratkovich,* 111 Mont. 19, 26 (question rests in the "sound discretion of the court").

Nebraska: no cases.

Nevada: no cases.

New Hampshire: no cases.

New Jersey: *State* v. *Dolan*, 86 N. J. L. 192, 195 (the ruling of the trial judge will not be reversed "if there be any legal evidence to support" it); see also *Roesel* v. *State*, 62 N. J. L. 216, 236–238, and *State* v. *Zeller*, 77 N. J. L. 619, 622.

New Mexico: no cases.

New York: no cases.

North Carolina: *State* v. *Burgwyn*, 87 N. C. 572 (where the subsidiary facts are established the question is one of law); but cf. *State* v. *Smith*, 213 N. C. 299 (the trial court should find only the ultimate fact).

North Dakota: *State* v. *Kerns*, 50 N. D. 927, 936 (no reversal "unless manifestly against the weight of the evidence").

Ohio: no cases.

Oklahoma: *Berry* v. *State*, 4 Okla. Cr. 202, 207–208 (the trial court has "large discretion"); *Doublehead* v. *State*, 27 Okla. Cr. 375, 387 (the trial court has "large discretion"); *Hix* v. *State*, 29 Okla. Cr. 20, 26 (the trial court has "large discretion"); see also *Tarkington* v. *State*, 41 Okla. Cr. 423.

Oregon: *State* v. *Humphrey*, 63 Ore. 540, 553 (the trial court is allowed "much latitude"); *State* v. *Morris*, 83 Ore. 429, 440 (no reversal "unless there is clear and manifest error"); *State* v. *Jordan*, 146 Ore. 504, 511 (no reversal of the trial court's exercise of its "discretion" unless its "discretion" was abused).

Pennsylvania: *Fife* v. *Commonwealth*, 29 Pa. St. 429, 437 (no reversal except for "clear and manifest error").

Rhode Island: no cases.

South Carolina: no clear cases. But see *State* v. *Carson*, 36 S. C. 524, and *State* v. *Derrick*, 44 S. C. 344, indicating that the question on review is narrow.

South Dakota: *State* v. *Allison*, 24 S. D. 622, 626 (no reversal unless "clearly against the weight of testimony").

Tennessee: no cases.

Texas: no clear cases. But see *Wheatley* v. *State*, 117 Tex. Cr. 599, 601, indicating that the question is "within the discretion of the [trial] court".

Utah: no cases.

Vermont: *State* v. *Day*, 55 Vt. 510 (on undisputed facts the question is one of law).

Virginia: *Omohundro* v. *Commonwealth*, 138 Va. 854, 864 (the finding of the trial judge will be given the "same weight and effect as is given to a finding of fact by a jury"); *Upshur* v. *Commonwealth*, 170 Va. 649, 655 (the trial court has "wide discretion").

Washington: no cases.

West Virginia: *State* v. *Mayle*, 108 W. Va. 681, 685 (the trial court has "wide discretion").

Wisconsin: *Tarasinski* v. *State*, 146 Wisc. 508, 513 (the ruling will not be reversed "unless manifestly wrong"); *Lang* v. *State*, 178 Wisc. 114, 124 (the ruling will not be reversed unless "clearly against the evidence").

Wyoming: no cases.

The decisions of the inferior federal courts are collected p. 61, n. 67, *supra*.

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Supreme Court of the United States

OCTOBER TERM 1941

No. [illegible] 10

MITCHELL CLIFTON ANDERSON, JOHN EDWARD [illegible]
EARL HUBBARD, et al.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

MOTION FOR LEAVE TO FILE BRIEF AND [illegible] ON BEHALF OF NATIONAL FEDERATION [illegible] CONSTITUTIONAL LIBERTIES *AMICUS* [illegible]

ABRAHAM J. ISSERMAN,
NATHAN WITT,
Counsel for Amicus Curiae

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Supreme Court of the United States

OCTOBER TERM 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the National Federation for Constitutional Liberties, an unincorporated association, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae*. Consent to such filing has been duly given by the parties hereto, including the Solicitor General, and the Clerk of this Court has been duly advised thereof.

The National Federation for Constitutional Liberties is pledged to the defense and extension of the Bill of Rights. Its members and affiliates, consisting of individuals, trade unions, and civic organizations throughout the United States, are deeply concerned with every threatened invasion of the freedoms therein guaranteed.

The National Federation for Constitutional Liberties is convinced that in these times a reaffirmation by this Court

against the use of coercion and duress by police officers, commonly known as the "third degree", will be further evidence of the strength of our institutions, now under such bitter attack. The Federation's interest in this case is therefore limited to the constitutional problem. The Federation believes that the decisions below violate the provision contained in the Fifth Amendment that "No person * * * shall be compelled in any criminal case to be a witness against himself * * * ", and will, if unreversed, serve as a precedent for the curtailment of the beneficent protection which that amendment affords the people against over-zealous police officers.

ABRAHAM J. ISSERMAN,
NATHAN WITT,
Counsel for National Federation
for Constitutional Liberties.

Supreme Court of the United States

OCTOBER TERM 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, et al.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

BRIEF ON BEHALF OF NATIONAL FEDERATION FOR CONSTITUTIONAL LIBERTIES *AMICUS CURIAE*

Statement

This brief is directed solely to the constitutional question which arises because of the method by which evidence used to convict the petitioners was obtained.

The facts and the background of the alleged crime, detailed in the briefs of the parties, need not be repeated here. The only facts with which we are here concerned relate to certain activities of agents of the Federal Bureau of Investigation who acted in concert with the Sheriff of Polk County, Tennessee. These facts are set forth in the argument.

ARGUMENT

The use in evidence of confessions or statements, secured by police officers under circumstances amounting to coercion and duress, was a violation of petitioners' rights guaranteed under the Fifth Amendment.

The question is whether the confessions in this case were made under such circumstances that they can not be regarded as voluntarily made. If so, the proposition that they were inadmissible is indisputable.

> *Ziang Sung Wan* v. *United States*, 266 U. S. 1;
> *Chambers* v. *Florida*, 309 U. S. 227.

The circumstances under which petitioners were apprehended and under which the confessions of six of them were obtained are set forth in the brief in support of the petition for certiorari, particularly at pages 14 to 21. A brief summary is pertinent here.

After there had been two dynamitings of power lines belonging to the Tennessee Valley Authority in Polk County, Tennessee, two agents of the Federal Bureau of Investigation, Mann and Roach, were sent on April 16, 1940, to investigate. In their investigations they worked intimately and constantly with Sheriff Biggs of Polk County, who had been playing the role of chief guard for the Tennessee Copper Company during a long, bitter and still current strike (R. 165-332; 550-552).

At about 3.30 on the morning of April 23rd, Biggs, accompanied by one Freed Long (who became the government's principal witness at the trial), met Agent Mann and advised him that there would be another dynamiting of the power lines at 1.20 the following night. Actually the dynamiting occurred at 1.17 during the night of April 23rd (R. 466-467). Sheriff Biggs advised the federal agents that he thought eighty or ninety of the strikers were guilty.

and went forward with the work of taking those men into custody so that the agents could question them (R. 192). The men were picked up without warrants or legal process of any kind; petitioner Robert Lee Ballew was seized in the State of North Carolina and taken into the State of Tennessee (R. 745-748; 805-806; 814). The prisoners were taken to a building in Copperhill, formerly used as a Y.M.C.A. but now owned by the Copper Company and used by the Sheriff to quarter a large number of special deputies. From time to time thereafter the men were taken to the Copperhill City Jail or to the County Building in Copperhill (R. 546-553).

Petitioners Felton Moore Woodward, John Edward Simonds and Earl Hubbard were taken into custody on April 24th and were questioned by the federal agents shortly after they were taken to the Y.M.C.A. building. On that day and the following day, April 25th, several more agents arrived and joined in the questioning. These petitioners were questioned night and day, by the agent and by the Sheriff. At times the petitioners were taken to the City Jail to spend the night, where some of them had to sleep on the concrete floor in crowded cells. While they were being held at the Y.M.C.A., armed deputy sheriffs circulated through the building. None of them was allowed to see friends or relatives, lawyers or advisers. After this treatment, day after day and night after night, these petitioners, who had been picked up on April 24th, made their statements on April 28th and April 29th. Petitioners John David Queen, Robert Lee Rhodes and Robert Lee Ballew were treated in substantially the same fashion, except that they were held for shorter periods but for more than twenty-four hours (R. 652-678; 681-764).

During the questioning of petitioners, the agents constantly told them they had "confidential information" as to the guilty persons, and would frequently tell petitioners that their answers were contrary to this "confidential information". Petitioner Woodward required about seven

hours to make his confession; the agents throughout kept reminding him of their "confidential information" (R. 328-329; 339-343; 353-355; 398-399).

This summary includes testimony of government witnesses. Campbell, the Chief Deputy Sheriff, testified in addition that the federal agent in charge had told him that he, the agent, would recommend that any person who made a statement would be placed on probation, and that he, Campbell, had passed this on to four or five of the prisoners in the City Jail (R. 272-273).

The petitioners added further details. They were abused; they were deprived of food and of places to sleep (R. 203-253); at times they slept in the same room with a large number of special deputies (R. 202); at times they were given nothing to drink, at times coffee which seemed doped (R. 206-208); they were called "damn liar" continuously (R. 205-206), "God damn liar" (R. 254), "God damn lying son of a bitch" (R. 239); they were promised light sentences if they confessed, and fifteen to thirty-five years if they did not (R. 230-231). Petitioner Hubbard was deprived of the right to smoke, deprived of water, deprived of his much-needed glasses (R. 204-207). On one day he was questioned in continuous relays from early morning until late afternoon, so that he finally needed a doctor (R. 204-205). Petitioner Queen was told that if he made a statement he would be able to go home and see his baby who was seriously ill with bronchial pneumonia (R. 682-683).

These facts are sufficient to bring the case within the facts in *Chambers* v. *Florida*, supra, the leading recent case on the subject.* The facts in that case are succinctly summarized in the opinion as follows:

> "Here, the record develops a sharp conflict upon the issue of physical violence and mistreatment, but shows, without conflict, the drag net methods of arrest on suspicion without warrant, and the protracted questioning and cross questioning of these ignorant young

* The test of voluntariness is the same under the Fifth Amendment as it is under the Fourteenth. Thus, *Wan* v. *United States*, supra, is cited as authority in the *Chambers* case, 309 U. S. at page 239, footnote 13.

colored tenant farmers by State officers and other white citizens, in a fourth floor jail room, where as prisoners they were without friends, advisers or counselors, and under circumstances calculated to break the strongest nerves and the stoutest resistance. Just as our decision in Brown v. Mississippi was based upon the fact that the confessions were the result of compulsion, so in the present case, the admitted practices were such as to justify the statement that 'The undisputed facts showed that compulsion was applied.'

For five days petitioners were subjected to interrogations culminating in Saturday's (May 20th) all night examination. Over a period of five days they steadily refused to confess and disclaimed any guilt. The very circumstances surrounding their confinement and their questioning without any formal charges having been brought, were such as to fill petitioners w[illegible] terror and frightful misgivings.

Some were practical strangers in the community; three were arrested in a one-room farm tenant house which was their home; the haunting fear of mob violence was around them in an atmosphere charged with excitement and public indignation. From virtually the moment of their arrest until their eventual confessions, they never knew just when anyone would be called back to the fourth floor room, and there, surrounded by his accusers and others, interrogated by men who held their very lives—so far as these ignorant petitioners could know—in the balance. The rejection of petitioner Woodward's first 'confession,' given in the early hours of Sunday morning, because it was found wanting, demonstrates the relentless tenacity which 'broke' petitioners' will and rendered them helpless to resist their accusers further. To permit human lives to be forfeited upon confessions thus obtained would make of the constitutional requirement of due process of law a meaningless symbol" (309 U. S. at pages 238-240).

In this case, as in the *Chambers* case, "drag net methods of arrest on suspicion without warrant" were used. Here in fact Sheriff Biggs picked up a group of men selected only from among the strikers whom he had been fighting for many months. Here, too, there was "protracted ques-

tioning and cross questioning" of the prisoners, in this case by persons with the authority of the Federal Government behind them. The prisoners here, like the prisoners in the *Chambers* case, "were without friends, advisers or counselors". In the *Chambers* case, the suspects were questioned for five days; here some of them were questioned for as much as six days. Here, although the petitioners were not subjected to "the haunting fear of mob violence", they were constantly surrounded and encompassed by armed men whom they had come to know as enemies—Sheriff Biggs and his special deputies.

In this case there was still more. There were false promises of probation and light sentences, alternating with abuse, swearing, and the use of vile epithets. There was deprivation of food, of water, of sleep; there was the compulsion to sleep on concrete floors and in the same quarters as special deputies. There was the torture of being deprived of spectacles with which to see, and the torture of being told that one could see his desperately sick baby again if one made a statement to the agents' satisfaction.

If "The undisputed facts showed that compulsion was applied" in the *Chambers* case, the undisputed facts show that compulsion was applied in this case. The confessions were clearly inadmissible.

See also:

Bram v. *United States*, 168 U. S. 532;
White v. *Texas*, 310 U. S. 530.

The brief in support of the petition, at pages 21-24, effectively disposes of the cases cited in the opinion of the Circuit Court of Appeals, and shows that those cases are clearly distinguishable on their facts. The recent case of *Lisenba* v. *California*, 86 L. Ed. 179, is also distinguishable.*

*It is important to note that Mr. Justice Black, who wrote for the Court in the *Chambers* case, dissented in the *Lisenba* case, in an opinion concurred in by Mr. Justice Douglas.

The facts appear sufficiently in the following quotations from the prevailing opinion:

> "In view of the conflicting testimony, we are unable to say that the finding below was erroneous so far as concerns the petitioner's claims of physical violence, threats or implied promises of leniency. There remains the uncontradicted fact that on two occasions, separated by an interval of eleven days, the petitioner was questioned for protracted periods. He made no admission implicating him in his wife's death during, or soon after, the interrogations of April 19, 20, and 21. If, without more, eleven days later confessions had been forthcoming we should have no hesitation in overruling his contention respecting the admission of his confessions.
>
> Does the questioning on May 2d, in and of itself, or in the light of his earlier experience, render the use of the confessions a violation of due process? If we are so to hold it must be upon the ground that such a practice, irrespective of the result upon the petitioner, so tainted his statements that, without considering other facts disclosed by the evidence, and without giving weight to accredited findings below that his statements were free and voluntary, as a matter of law, they were inadmissible in his trial.
>
> * * * * * * * *
>
> We have not hesitated to set aside convictions based in whole, or in substantial part, upon confessions extorted in graver circumstances. These were secured by protracted and repeated questioning of ignorant and untutored persons in whose minds the power of officers was greatly magnified; who sensed the adverse sentiment of the community and the danger of mob violence; who had been held incommunicado, without the advice of friends or of counsel; some of whom had been taken by officers at night from the prison into dark and lonely places for questioning. This case is outside the scope of those decisions.
>
> Like the Supreme Court of California we disapprove the violations of law involved in the treatment of the petitioner, and we think it right to add that where a prisoner held incommunicado is subjected to question-

ing by officers for long periods, and deprived of the advice of counsel, we shall scrutinize the record with care to determine whether, by the use of his confession, he is deprived of liberty or life through tyrannical or oppressive means. Officers of the law must realize that if they indulge in such practices they may, in the end, defeat rather than further the ends of justice. Their lawless practices here took them close to the line. But on the facts as we have endeavored fairly to set them forth, and in the light of the findings in the State courts, we cannot hold that the illegal conduct in which the law enforcement officers of California indudged by the prolonged questioning of the prisoner before arraignment, and in the absence of counsel, or their questioning on May 2, coerced the confessions, the introduction of which is the infringement of due process of which the petitioner complains. The petitioner has said that the interrogation would never have drawn an admission from him had his confederate not made a statement; he admits that no threats, promises, or acts of physical violence were offered him during this questioning or for eleven days preceding it. Counsel had been afforded full opportunity to see him and had advised him. He exhibited a self-possession, a coolness, and an acumen throughout his questioning, and at his trial, which negatives the view that he had so lost his freedom of action that the statements made were not his but were the result of the deprivation of his free choice to admit, to deny, or to refuse to answer" (86 L. Ed. at pp. 190-191).

The mere statement highlights the differences in the cases. In the *Lisenba* case, there was not the repeated and persistent questioning there was here. The prisoner was permitted counsel and was not held incommunicado. He was not constantly surrounded by large numbers of armed and hostile officials. He was not made to suffer physical pain by being refused food and water, by being forced to sleep on beds of stone or in hostile surroundings. There were no threats, there were no promises. Even so, the opinion in the *Lisenba* case recognized that the lawless practices of the officers there "took them close to the line".

If that is so, the lawless and inhumane acts of the officers in this case took them far beyond the line which separates a statement voluntarily made from one made as the result of the "third degree".

CONCLUSION

It is therefore respectfully submitted that this case is one calling for exercise by this Court of its supervisory powers in order that the error herein pointed out may be corrected; that the law may be properly and authoritatively defined and the judgment of the Circuit Court of Appeals for the Sixth Circuit be reversed to the end that justice be done to petitioners and that to such end a writ of certiorari should be granted and this Court review and reverse said decision.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. ~~852~~ 10

MITCHELL CLIFTON ANDERSON, ET AL.,
Petitioner,

against

UNITED STATES OF AMERICA.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

ARTHUR GARFIELD HAYS,
On behalf of American Civil Liberties Union, Amicus Curiae.

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Supreme Court of the United States

OCTOBER TERM, 1941

No. 852

MITCHELL CLIFTON ANDERSON, ET AL.,
Petitioner,

against

UNITED STATES OF AMERICA.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

The American Civil Liberties Union is a nation-wide organization devoted to the defense of civil liberties and the Bill of Rights. A fundamental premise of American jurisprudence which was incorporated in the Constitution is that each man shall receive a fair trial and shall not be forced to bear witness against himself. Where the abuses have been so prevalent as to preclude the possibility of a fair proceeding and in particular where confessions to a crime have been obtained under circumstances indicating

duress, the American Civil Liberties Union feels obliged to intervene to defend the basic civil liberties of the individuals involved.

It is the considered opinion of the American Civil Liberties Union, after an examination of the record, that the convictions of the petitioners here represent a flagrant violation of the civil rights of persons accused of a crime. This brief is accordingly directed solely to the constitutional issues involved in the admission in evidence of confessions signed by six of the petitioners here. But, of course, if the confessions were illegally obtained and introduced into evidence against all the petitioners, that would constitute reversible error as to all of them.

POINT ONE

The use of confessions obtained under circumstances amounting to duress and coercion to support a criminal conviction is a denial of petitioners' right against self-incrimination guaranteed by the Fifth Amendment.

That a confession is inadmissible in evidence unless made voluntarily is well settled by the decisions of this Court, *Ziang Sung Wan* v. *U. S.*, 266 U. S. 1, 69 L. Ed. 131; *Pupura* v. *U. S.*, 262 F. 473; *Chambers* v. *Florida*, 309 U. S. 227, 84 L. Ed. 716.

A review of the facts will serve to show that the confessions in this case were so obtained. On April 22, 1940 one Freed Long informed Sheriff Biggs and Federal Agent Mann that certain lines were to be blown up at 1:20 a.m. the following night; Long claims to have attended a meeting where the dynamiting was planned (R. 466-7). While

Sheriff Biggs and Agent Mann sat in a hotel, not having even informed the sheriff of the adjoining county of what was to take place in his jurisdiction, or taken any other steps to prevent the dynamiting, the explosions took place at the expected time and on the expected lines (R. 557).

In the ensuing days all of the petitioners were arrested by the deputy sheriffs, without warrant, without appearance before a magistrate or any show of legality whatsoever; one of them was taken illegally from one state to another (R. 548-9, 559-60, 192, 747). They were taken to the company owned YMCA building where they were questioned. This building had been taken over by Sheriff Biggs and his deputies who had been acting as guards during this strike. Five of them were thrown into a cell seven feet by seven feet in what is known as the City Jail. There were only two small bunks for two of the prisoners, the others being forced to lie on the concrete floor if they wished to sleep or to rest (R. 682-734). They were shuttled back and forth by the deputies from the jail to the YMCA, then being used to house the deputies. There they were intermittently questioned for from two to six hours at a time by the Federal Agents (R. 214). During this period the petitioners were given cold bologna sandwiches for breakfast, lunch and dinner (R. 227-653); denied anything to drink during protracted periods of questioning (R. 207); given allegedly doped coffee with their meals (R. 228); forbidden to see or even communicate with anyone. They were held thus imprisoned by guards paid by the company against whom they had been leading a strike.

Taken before the Federal Agents for questioning they were called "damned liars" (R. 206) and "damn lying sons of bitches" (R. 239); told that the FBI succeeded in

convicting 98% of those whom they prosecuted and that they were liable to a 35 year jail sentence (R. 700)—but that they would be recommended for parole if they would "talk" (R. 231-37).

While in such a state of mind—harassed and confused—the petitioners were assured that their bail would be reduced so that they could go free if they would but sign a statement. John David Queen was told he could go to see his baby, desperately ill with pneumonia (R. 683); Edward Simmonds that he could see his family and sick wife (R. 655); Felton Woodword that another prosecution against him by the Sheriff would be dropped (R. 695); Earl Hubbard that he could go out and get a nice meal and a drink of water (R. 671). All saw it as the only way to escape from this illegal imprisonment to which the Federal Agents were conveniently shutting their eyes. Illustrative of the Federal Agents' attitude is this testimony of Agent Rocke:

> "Q. You know whether he had anything to eat before that time? A. No, I was not interested in whether he had anything to eat.
>
> Q. You didn't care whether he had anything to eat? A. That is right; he was not in my custody." (R. 174).

The answers which the petitioners made were checked for truth by "confidential information" (R. 354, 5; 339, 40; 357; 398-9) which the agents had received; petitioners were told they were "damn liars" until their statements conformed to the agents' "confidential information". It took seven hours to finish Felton Moore Woodword's confession by this method (R. 341, 2, 3; 329).

All of the petitioners were so held for over twenty-four hours. Three of them withstood six days of this treatment before giving the desired signatures.

Only after they had signed were they permitted to see counsel or friends (R. 266, 645, 770, 773) or even taken before a magistrate. Then the reduction in bail was recommended, as had been promised. James H. Anderson, U. S. Commissioner for the District, testified:

> "Agent Mann requested that I fix bond of some of them, and I believe it was the five that pleaded guilty, at $1000." (R. 573, 4)

Bond had been set at $3000.

In the recent case of *Lisbena* v. *Calif.*, 86 L. Ed. 179, this court said:

> "We have not hesitated to set aside convictions based in whole or in substantial part upon confessions extorted in graver circumstances. These were secured by protracted and repeated questioning of ignorant and untutored persons in whose minds the power of the officers was greatly magnified; who sensed the adverse sentiment of the community and danger of mob violence, without advice of friends or counsel, some of whom had been taken by officers at night from the prison into dark and lonely places for questioning. Lisbena *v.* Calif. 86 L. Ed. 179, 190."

Here we have again "dragnet methods of arrest on suspicion without warrant," *Chambers* v. *Florida*, 309 U. S. 227. We have repeated questioning by Federal officers who the petitioners were assured (R. 272) and who they believed (R. 700) could do whatever they said they would do; prisoners held incommunicado in hostile surroundings and by hostile guards, upon whose activities the Federal

officers turned a blind eye. Men thus held were told by the agents that all they had to do was "sign this paper" to go free (R. 753, etc.) informed indirectly of Agent in Charge Plaxico's statement that he would be glad to recommend a parole for those who "came clean". Denied the right to seek advice as to the truth of these statements from counsel or friend, these men signed whatever they were told to sign.

This court has said:

> "The law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner and therefore excludes the declaration if any degree of influence has been exerted. In the case before us we find that an influence was exerted and any doubt as to whether the confession was voluntary must be determined in favor of the accused; we cannot escape the conclusion that error was committed by the trial court in admitting the confession under the circumstances disclosed by the record:" Bram *v.* U. S., 168 U. S. 532, 42 L. Ed. 568.

That there has been a degree of influence here would seem incontrovertible—even upon a view of the facts most favorable to the prosecution. The coercion here has been far stronger than that in *Bram* v. *U. S.*, 168 U. S. 532, or in *Pupura* v. *U. S.*, 262 Fed. 473, and is well within the authority of *Chambers* v. *Florida*, 309 U. S. 227. There would seem to be little room for doubt that the confessions of the petitioners were involuntary. The cases cited by the Circuit Court in support of the contrary view are effectively distinguished in Brief in Support of Petition for Certiorari, pages 21-25. The Circuit Court below in fact admits that irregularities at the time of the arrests

and questioning took place. *Anderson* v. *U. S.*, 124 F. (2d) 58, 67, 68. That the Court may not have been unprejudiced is illustrated by the addition of this sentence to a paragraph with which it has no rational connection: "Each of the confessing appellants was a promoter of the strike at the plant and active in making it effective." *Anderson* v. *U. S.*, 124 F. (2d) 58, 67. It glosses over the fact that armed deputies stood by at the questionings by stating that none of "the appellants was of tender age or of weak intellect or that any of them were in a weakened physical condition so as to be easily persuaded to do something against their will." The only question here is whether duress was used. It is submitted that the evidence adequately establishes that contention and that the opinion of the court below on this point was irrelevant and contrary to law.

The necessity of strictly enforcing the guarantees of the Fifth Amendment in regard to confessions is most apparent now when we are engaged in a war to abolish the very procedure complained of here. This court has already said (*Chambers* v. *Fla.*, 309 U. S. 227 (1940)):

> "We are not impressed by the argument that law enforcement methods such as those under review are necessary to uphold our laws. * * * *
>
> "No higher duty, no more solemn responsibility rests upon this Court than that of transmitting into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution, of whatever race, creed or persuasion."

CONCLUSION

For the reasons above stated, the Circuit Court of Appeals for the Sixth Circuit erred in sustaining the trial court's admission of petitioners' confessions in evidence against them, and it is therefore urged that this Court grant the writ sought.

Respectfully submitted,

ARTHUR GARFIELD HAYS,
Counsel for the American Civil Liberties Union, Amicus Curiae.

SUPREME COURT OF THE UNITED STATES,

No. 10.—October Term, 1942.

Mitchell Clifton Anderson, John Edward Simonds, Earl Hubbard, Felton Moore Woodward, Marion Luther Ellis, Robert Lee Ballew, John David Queen, Robert Lee Rhodes, Petitioners,

vs.

The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[March 1, 1943.]

Mr. Justice Frankfurter delivered the opinion of the Court.

The petitioners were convicted, in the District Court for the Eastern District of Tennessee, of conspiring to damage property owned by the Tennessee Valley Authority, a corporation in which the United States is a stockholder, in violation of §§ 35(C) and 37 of the Criminal Code as amended (18 U. S. C. §§ 82, 88). The Circuit Court of Appeals for the Sixth Circuit affirmed the convictions, 124 F. 2d 58, and we brought the case here because it presented serious questions in the administration of federal criminal justice, 316 U. S. 651. The questions are similar to those decided this day in No. 25, *McNabb* v. *United States*. The two cases were argued at the same time and, as will appear from a short summary of a long record, are governed by the same considerations.[1]

In July 1939, the International Union of Mine, Mill and Smelter Workers struck against the Tennessee Copper Company's mines

[1] As in the *McNabb* case, there are no specific findings here as to the circumstances in which the incriminating statements in controversy were admitted against the petitioners. When these statements (excepting the confessions of three petitioners) were offered in evidence, the petitioners objected, and the trial court held a hearing in the absence of the jury to determine whether the statements were "voluntary". At the conclusion of this preliminary examination, the court overruled objections to the admissibility of these statements. The jury was recalled and the same testimony was repeated. The evidence relating to the confessions of three of the petitioners was, by stipulation, heard only once and in the presence of the jury. Referring to all this evidence as "certain parts of the proof", the judge thus charged

at Copperhill, Polk County, Tennessee. The strike was followed by a shut-down, but the mines were reopened in August after the sheriff brought in a number of special deputies who were in the company's pay. It was one of those obdurate mining strikes, and it continued into April of 1940, when the violence which gave rise to this prosecution occurred. On April 1st the company's operations were interrupted by the dynamiting of two power lines, owned by the TVA, from which the company obtained the power necessary for its activities. On April 14th two steel towers were dynamited. Two days later two special agents of the Federal Bureau of Investigation arrived in Copperhill to investigate the explosions. On April 24th two more power lines were blown down.

Thereupon, on the same day, the sheriff on his own initiative began to take into custody strikers, including the eight petitioners, whom he suspected of participation in the dynamiting. These arrests were made without warrant. With commendable candor in regard to this and other misconduct of officers of the law, the Government does not defend the legality of the arrests.[2] The men were not taken before any magistrate or other committing officer, as required by Tennessee law. Michie's Code (1938) § 11515. Instead they were taken to the company-owned Y. M. C. A. building in Copperhill, which was being used by the sheriff and his special deputies as their headquarters. On April 24th and 25th six more special agents of the Federal Bureau of Investigation arrived in Copperhill to assist in the investigation.

While the petitioners, with at least thirteen others, were thus held in custody at the Y. M. C. A. by the state officers, they were questioned by the federal agents intermittently over a period of six days during which they saw neither friends, relatives, nor counsel. Incriminating statements from six of the petitioners were the fruit of this interrogation. To determine whether these state-

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the jury regarding the admission of these incriminating statements: "There has been allowed for your consideration certain statements, confessions, or admissions alleged to have been made by some of the defendants. It is primarily for the Court to determine whether or not such statements are admissible for your consideration but it is wholly for you to determine how much weight or credit you will give to these statements." We shall assume as facts, therefore, only the testimony of Government witnesses and so much of the petitioners' evidence as is uncontradicted.

[2] Under Tennessee law an officer may arrest without a warrant when a felony has in fact been committed, and he has reasonable grounds for believing that the person arrested has committed it. Michie's Code (1938) § 11536. But willful destruction of power lines is only a misdemeanor under state law. *Id.*, § 10863(8).

ments were properly admitted in evidence, it is necessary to particularize the circumstances under which each confession was made.

Simonds. Simonds was arrested by two deputies on the afternoon of Wednesday, April 24th, and taken directly to the Y. M. C. A. After spending the night at the county jail, he was questioned by one of the federal agents for about an hour Thursday morning at the Y. M. C. A. The questioning was resumed at two o'clock in the afternoon by three agents who talked with him for about two hours; at seven o'clock that evening he was again questioned by two agents for another two hours. On Friday morning he was questioned for about an hour. And on Saturday he was questioned at three different periods throughout the afternoon and evening, each period lasting about half an hour. He was again questioned on Sunday afternoon for about an hour by two agents, one of whom described what occurred then as follows: "We went over the entire case with him, and pointed out the discrepancies in his story and the information we had developed on investigation, which knocked down his alibi, and out of a clear sky he said 'well, I want to tell you I am guilty.'" One of the agents thereupon took Simonds' written statement.

Hubbard. Hubbard was arrested by two deputies on Wednesday evening, April 24th, and taken to the Y. M. C. A. He, too, spent the night in the county jail. He was questioned by four agents at the Y. M. C. A. on Thursday afternoon for about two hours. Two of the agents questioned him again that evening for about two hours. At two o'clock Friday afternoon he was questioned for about forty-five minutes; at five o'clock he was questioned for another hour and a half. At seven-thirty Friday evening two agents questioned him for two more hours. He was questioned intermittently all day Saturday. One agent questioned him for periods of fifteen minutes two or three times during the morning and afternoon. Another questioned him for half an hour in the morning. A third agent talked with him for another two hours sometime during the day. And he was questioned again for about twenty minutes at six o'clock in the evening. He was not questioned on Sunday, but he was present during the questioning of Simonds by the federal officers that morning. After hearing Simonds admit his guilt, Hubbard also confessed.

Woodward. Woodward was also arrested on Wednesday afternoon, April 24th, by two deputies who took him first to the

Y. M. C. A. and then to the county jail. He was questioned by four federal officers for about two hours Thursday afternoon, and questioned again for another two hours that night. The officers questioned him for about fifteen minutes on Saturday. On Sunday he was brought into the room where Simonds and Hubbard were, and upon being confronted with their confessions, also confessed. On Monday the officers spent about five hours, from 11 a. m. until 2 p. m. and from about 3:30 until 7 or 7:30 p. m., questioning him in order to reduce his confession to writing. The manner of Woodward in giving his statement was thus described by the agent who questioned him: "He had considerable difficulty in recalling the details, he said his mind was not exactly clear on all of it, it took a good while in order to get the details of it, of how it happened, everything in the chronological order of events, and he also complained on occasions that his mind was befuddled in making the statement, upon relating about what he had done, and that is the reason it took so long to do it. It took the morning and the greater part of the afternoon."

Rhodes. Rhodes was arrested Sunday night, April 28th, and spent that night in the jail, sharing a cell with Woodward, Hubbard, Simonds, and Queen. He was questioned for about two hours by two agents on Monday morning, and then confessed.

Queen. Queen was arrested by two deputies on Sunday afternoon, April 28th, and was taken to the Y. M. C. A. After spending the night in jail, he was questioned for about an hour the following night by three agents. Upon being confronted with the confessions of the others, he admitted his guilt.

Ballew. Ballew was arrested by three deputies on Tuesday afternoon, April 30th, and taken to the Y. M. C. A. He was questioned there for about an hour by two federal officers. After spending the night in jail, he confessed the following morning.

The question for decision is whether these confessions—repudiated when those who made them took the witness stand at the trial—were properly admitted in evidence against all the petitioners, including Anderson and Ellis who did not confess. In the *McNabb* case we have held, 317 U. S. —, that incriminating statements obtained under the circumstances set forth in that opinion cannot be made the basis of convictions in the federal

courts. The considerations which led to that decision also govern this case. The detention of the petitioners by state officers was, as the Government concedes, in violation of the Tennessee statute which provides that "No person can be committed to prison for any criminal matter, until examination thereof be first had before some magistrate." Michie's Code (1938) § 11515. The courts of Tennessee exact scrupulous observance of this prohibition by its law officers. See *Polk* v. *State*, 170 Tenn. 270; *State ex rel. Morris* v. *National Surety Co.*, 162 Tenn. 547.

Unaided by relatives, friends, or counsel, the men were unlawfully held, some for days, and subjected to long questioning in the hostile atmosphere of a small company-dominated mining town. The men were not arrested by the federal officers until April 30th, and only then were they arraigned before a United States Commissioner, except for Ballew who was not arraigned until May 2nd or 3rd. There was a working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record. Therefore, the fact that the federal officers themselves were not formally guilty of illegal conduct does not affect the admissibility of the evidence which they secured improperly through collaboration with state officers. *Gambino* v. *United States*, 275 U. S. 310, 314; *Byars* v. *United States*, 273 U. S. 28, 33-34.

The Government urges that, even if the confessions are held to be inadmissible, only the convictions of the six petitioners who confessed should be reversed. The prosecution rested principally on these confessions and the testimony of an informant, Freed Long, whose credibility was under severe attack. The incriminating statement of each petitioner implicated all the others, including those who did not confess. To be sure, the trial court devised a procedure under which the confessions were introduced without mention of the names of the other persons implicated. But their names were in fact revealed in the course of the cross-examination of the confessing petitioners. So also, while the trial judge appeared to admit the confessions "only to be used against the persons who made them", his charge bound the jury to no such restricted use of the confessions. On the contrary, from what the trial judge told them the jury had every right to assume that in ascertaining the guilt or innocence of each defendant they could consider the whole proof made at the trial. There is no reason to believe, therefore, that confessions

which came before the jury as an organic tissue of proof can be severed and given distributive significance by holding that they had a major share in the conviction of some of the petitioners and none at all as to the others. Since it was error to admit these confessions, we see no escape from the conclusion that the convictions of all the petitioners must be set aside.

Reversed.

Mr. Justice JACKSON and Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

Mr. Justice REED dissents.